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INDEX TO JOINT APPENDIX

VOLUME I

	PAGE
Relevant Docket Entries	1a
Decision and Order of the National Labor Relations Board, dated July 31, 1961	3a
Order Correcting Decision and Order, dated Au- gust 7, 1961	32a
Intermediate Report and Recommendation of Trial Examiner, dated October 18, 1960	33a
Excerpts from Transcript of Testimony of Hear- ing, May 23 through May 26, 1960 in Case No. 6-CA-1790:	
Appearances	65a
Offers of Counsel	66a, 516a
<i>General Counsel's Witnesses:</i>	
Gordon D. Ferrell	
Direct Examination	87a
Cross Examination	177a
Re-Direct Examination	280a
Angelo Colella	
Direct Examination	190a
Cross Examination	218a
Re-Direct Examination	227a
Re-Cross Examination	229a
Edward F. Bordonaro	
Direct Examination	231a
Cross Examination	267a
Re-Direct Examination	271a, 519a
Re-Cross Examination	520a
Ethel Guianen	
Direct Examination	273a

Index to Joint Appendix.

VOLUME II

PAGE

Ethel Guianen

Cross Examination 277a

Respondent's Witnesses:

Gordon D. Ferrell

Direct Examination 291a

Cross Examination 332a

Re-Direct Examination 362a, 416a

Re-Cross Examination 462a

Raymond Bertone

Direct Examination 363a

Cross Examination 392a

Lewis J. Shiolen

Direct Examination 418a

Cross Examination 439a

George Schau

Direct Examination 448a

Cross Examination 455a

Dominic Puyalie

Direct Examination 476a

Cross Examination 490a

Horace S. Herrick

Direct Examination 499a

Cross Examination 506a

Harry S. Malutich

Direct Examination 508a

Cross Examination 515a

EXHIBITS

Respondent's Exhibits:

1—Union Proposal dated June 24, 1959 521a

12—List of Employees Working on Production
or Maintenance Jobs during the Strike,
Beginning with Week of First Replace-
ments 522a

Index to Joint Appendix.

iii

	PAGE
13—List of Bargaining Unit Employees during Weeks following End of Strike	523a

General Counsel's Exhibits:

1—Complaint and Notice of Hearing	525a
Answer	531a
2—Summary of Meetings between Company and Union	537a
3—List of Replaced Employees	547a
5-B—Company Advertisement in Erie Times, Monday, May 25, 1959 Offering \$1,000 Reward	551a
5-C—Company Advertisement in Erie Times on June 14, 1959 entitled "A Report to the Community on the Erie Resistor Strike"	553a
5-D—Classified Ad entitled "Women Wanted" appearing in Erie Morning News on June 17, 1959	555a
6—Letter from Company, addressed to All Employees of Erie Resistor Corporation and Members of I.U.E. Local 613, dated June 10, 1959	556a
7—Letter from Company, addressed to All Members of Erie Resistor Corporation Local 613 I.U.E., dated May 3, 1959	560a
11—Company Proposal of June 25, 1959	561a
12—Replacement Policy and Procedure, dated May 27, 1959	564a
13—Replacement Policy and Procedure, dated June 15, 1959, amending Policy and Procedure of May 27, 1959	566a

Index to Joint Appendix.

	PAGE
14—Telegram from Bordonaro, dated June 25, 1959, notifying Company of Termination of Strike	567a
15—Company's Reply, dated June 25, to Bordonaro's telegram of June 25, 1959	569a
21—Company's Telephonic News Releases dated May 12, 1959 re Progress of Negotiating Meetings and June 25, 1959 re Termination of Strike	570a
22—Statement of Company's Position, dated April 8, 1959	571a
25—Letter from Company to All Members of Local 613, I.U.E., dated May 14, 1959	574a
26—Letter from Company to All Members of Local 613, I.U.E., dated May 19, 1959	576a
27—Settlement Agreement dated July 17, 1959	578a
28—Company Notice dated August 11, 1959 entitled "Maintenance of Membership" ..	580a
34—Letter from Union to Returning Strikers, dated May 6, 1959	582a
41—Excerpts from U. S. Department of Labor Publication entitled "Chronic Labor Surplus Areas", July 1959	584a
42—Notes Made by Angelo Colella at Negotiating Meeting, May 14	589a

APPENDIX—Volume II.

ETHEL GUIANEN

CROSS EXAMINATION

Q. (*By Mr. Wayman*) Could I just look at the minutes of the meeting of May 29th to which you testified?

A. Yes, sir.

Q. Miss Guianen, prior to the motion and the vote on this subject I assume there was some discussion or report by one of the union officers?

A. Yes.

Q. Who made the report to the membership on this subject of the so-called super-seniority?

A. President Bordonaro.

Q. Do you have that recorded in your minutes also? The substance of his report?

A. Yes.

Q. Would you be kind enough to read us the paragraph that consists of his report to the membership and apparently which resulted in the motion?

[267] A. There are several here. Shall I read all of them?

Q. Pardon?

A. There are several here. Shall I read all of them? Which one do you want me to read? There are several reports regarding seniority.

Q. No. The so-called super-seniority. The others appear to deal with other parts of the contract, is that right? You tell me which one does deal with super-seniority that we have been talking about, and just read that part, if you will.

A. "The company has reduced its demand for super-seniority for scabs. They have reduced their demands from super-seniority to a flat twenty years

additional seniority for scabs. For example, if a scab has five years service he would automatically be rewarded with an additional twenty years, making a total of twenty-five years service. Of course, the seniority would not entitle these loyal employees to additional vacation benefits that go with seniority."

Q. Is that all?

A. That I think would about everything that pertains to the twenty years. Right in here.

Q. Oh, I see where it is.

A. The rest does not pertain to the twenty years.

Q. All right. Thank you.

Mr. Wayman: I have no more questions.

Trial Examiner: Any redirect?

[268] *Mr. Fleischut:* No.

Trial Examiner: Miss Guianen, did the union take a strike vote before they went on strike?

The Witness: Yes, they did.

Trial Examiner: Can you tell me what were the strike issues?

The Witness: Before the strike?

Trial Examiner: Yes. What were you striking for?

The Witness: A better contract, and at that time the seniority, at that time even, was in issue.

Trial Examiner: How about wages?

The Witness: Wages? Yes. Insurance.

Trial Examiner: There has been testimony here at various times there were five issues, and I was just wondering if you knew the strike issues.

The Witness: The five issues at the time of the strike, at the very beginning—you ask me when we

Ethel Guianen—Cross.

took the strike vote—the strike vote was taken before these final five issues.

Trial Examiner: Yes, I understand that.

The Witness: That's where I wasn't sure.

Trial Examiner: I was trying to help, but maybe I confused you. Can you just tell us generally what the strike issues were when the local went on strike?

The Witness: When we walked out?

Trial Examiner: Yes.

[269] *The Witness:* Wages, insurance, subcontracting. I can't remember, because we dropped two or three of them very shortly afterwards.

Trial Examiner: You mentioned something about seniority? Was that an original issue?

The Witness: Yes, that was an original issue.

Trial Examiner: Those were at least the principal issues, is that right?

The Witness: Yes.

Trial Examiner: All right, that's all. You may step down.

Do you have any questions on the subject document?

Mr. Wayman: No.

Trial Examiner: All right, you may step down.

Mr. Wayman: I think that is important, but perhaps we can develop that a little more fully through one of our witnesses.

Trial Examiner: I meant to ask one of the witnesses yesterday, but I overlooked it.

(Witness excused.)

Gordon D. Ferrell—Re-Direct.

Mr. Fleischut: The company has another document that wasn't prepared at the time Mr. Ferrell first appeared, but I would like for him to take the stand to identify that document.

Mr. Wayman: We can stipulate what this is.

[270] *Mr. Fleischut:* I want to ask him a few questions about it.

Mr. Wayman: All right.

GORDON D. FERRELL a witness called by and on behalf of the General Counsel, having been previously duly sworn, was recalled, examined and testified further as follows:

Trial Examiner: Just have a seat, Mr. Ferrell. You have already been sworn as a witness in this hearing, and you are still under oath.

Mr. Fleischut: My records indicate the document which Mr. Ferrell is going to present should be numbered General Counsel's Exhibit 43.

Trial Examiner: Forty-three is the next one.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 43 for identification.)

RE-DIRECT EXAMINATION

Q. (*By Mr. Fleischut*) Mr. Ferrell, in response to my subpoena for a list of all of the people who have been laid off in the bargaining unit since the end of the strike, you have prepared General Counsel's Exhibit 43?

A. Yes.

Gordon D. Ferrell--Re-Direct.

Q. I notice the names are in the left column; and the center column entitled "Seniority Date", that is the person's date of [271] accrued seniority, is that correct?

A. Yes.

Q. And the right hand column indicates the date they were laid off, is that right?

A. Yes, sir.

Q. I see the last—

Trial Examiner: Is this after the strike commenced?

Mr. Fleischut: After the strike was over.

Trial Examiner: After the strike terminated?

Mr. Fleischut: That's correct.

Q. (*By Mr. Fleischut*) Is that correct, Mr. Ferrell?

A. That's correct.

Q. I notice the last two pages also has a list there entitled "Plus twenty years". What does that indicate?

A. This indicates that these were former employees who came to work during the strike who had the seniority date listed, but they also had the twenty years added, as far as—which came into play when they were subject to layoff.

Q. These people got the twenty years super-seniority?

A. Yes.

Q. But the list indicates their actual date of accruing seniority?

A. That is correct.

Q. Does this list incorporate everyone in the bargaining unit who has been laid off since the strike?

[272] A. Yes:

Q. It is my understanding that in the ordinary course of your business you lay people off and recall people almost every day, is that correct, because of the nature of the business?

A. That's correct.

Q. Does this list include people who are laid off one or two days and then called back or is it merely a list of those who are currently laid off and have been laid off since the end of the strike?

A. This is a list of the names of all of those who have been laid off during or since the end of the strike. They may have been laid off and called back and laid off again, but their name will only appear once.

Q. That wasn't the point of my question. The point was are all of these people currently laid off?

A. Are they all currently laid off?

Q. Yes.

Mr. Wayman: If you know.

The Witness: I don't know that.

Trial Examiner: All right.

Q. (By Mr. Fleischut) Does the list incorporate anyone who was laid off, for example, one day last August and September and has worked ever since? Would that person's name appear on this list?

[273] A. Yes. You asked for every one. The name of everyone who had been laid off during the interim.

Q. At any time.

A. And the names are on the list.

Q. Even though only for a day or two, is that correct?

A. Yes. Without regard to the length of time they were on layoff.

Gordon D. Ferrell—Re-Direct.

Q. Or whether they are currently on layoff?

A. Correct.

Q. I would like now to direct your attention to the exhibit, General Counsel's Exhibit Number 32. Thirty-two is a list of replaced people and replacements and so forth. I have in my possession, Mr. Ferrell, another list which is similar to this, provided by the company, but the information contained thereon is not exactly the same.

Mr. Wayman: This is objected to.

Mr. Murphy: Are you testifying?

Mr. Wayman: Is counsel testifying?

Q. (By Mr. Fleischut) Have changes been made on this list from time to time?

A. Which list?

Q. The information contained in General Counsel's Exhibit 32?

A. This list?

Q. Yes.

[274] *Mr. Wayman:* I am going to have to move that the remarks of the General Counsel, regarding the list he is supposed to have, be stricken because there is an inference there that is unfair to this witness and prejudicial to our case.

Trial Examiner: I will let it stand, at this time, anyhow.

Mr. Fleischut: I think I can correct it with the next question or two.

Mr. Wayman: I think reference to that list, your list or some list not in evidence, is going to

Gordon D. Ferrell—Re-Direct.

provoke rather loud objections. I have a feeling the witness has probably forgotten the question by this time.

Trial Examiner: To be frank with you, I didn't get the last part of the question, myself. What was your question?

Mr. Fleischut: Let me strike it, sir.

- Q. (By Mr. Fleischut) What is the date of the preparation of the list, Mr. Ferrell?
- A. This particular list?
- Q. Yes.
- A. There is no date on it, but this was the list with the August date, as I recall, that you requested.
- Q. Now, with reference to the column indicating "request for reinstatement"; which I believe is the second column from the left, is that correct?
- A. This is the date they applied for reinstatement, yes.
- [275] Q. And when a person applies for a reinstatement is a record made of their application?
- A. Yes.
- Q. Will you recheck the information on that list for us with your personnel department to ascertain if additional requests for reinstatement have been made?

Mr. Wayman: Let me interpose here. I don't think this is proper examination on this document. If it is a request that we recheck the information which, as anyone can see, something written in pen on a list which was originally typed, we will be glad to recheck any information and supply it. I don't see how this witness can answer a question like that on the stand.

Gordon D. Ferrell—Re-Direct.

Trial Examiner: The document has already been received in evidence as General Counsel's Exhibit Number 32, and now you are just blandly asking the witness would he mind checking everything on this list?

Mr. Fleischut: On'y with regard to those who are listed as not having requested reinstatement.

Trial Examiner: How many names are on that list?

Mr. Fleischut: There are eighteen on that list, as indicated, that have not requested reinstatement.

Trial Examiner: What is your basis for making such a request?

Mr. Fleischut: I believe it is in error.

[276] *Mr. Wayman:* I will say right now, as counsel for the respondent, that if somebody made a request for reinstatement at a date later than is shown on this list we would not conceal the fact from the General Counsel if it became pertinent, but the list provided is as accurate as we can make it as of the time it was prepared.

Mr. Fleischut: That is all I want, Mr. Wayman. That the list will be rechecked, and any errors ascertained will be brought to my attention.

Mr. Wayman: Now, Mr. Fleischut, you are talking about whether or not some of these people that are shown on there as not having requested reinstatement might have requested reinstatement subsequently, and you want us to check that?

Mr. Fleischut: That's right.

Gordon D. Ferrell—Re-Direct.

Mr. Wayman: I tell you we will check at your request. Not because we have to, but because we are willing to cooperate if it becomes pertinent; but I don't think that is a proper question on this exhibit.

Mr. Fleischut: All right, I will take your statement at its worth.

Mr. Murphy: May I suggest Mr. Fleischut—if he has eighteen names he wants rechecked—that he give us the eighteen names so we can check it?

Trial Examiner: That's what I was going to suggest. If you are suspicious of any of the names give them the names.

[277] *Mr. Fleischut:* I would like to have all of those indicated as not having requested reinstatement checked.

Trial Examiner: Yes, that's a very easy way for you to get rid of the problem. Sure. Just drop it in somebody else's lap.

Mr. Murphy: That's the way all of these exhibits were prepared. Mr. Fleischut had every one of them in his files, but he asked us to make four copies to produce for him. Let him tell us what he wants, and we will get it.

Mr. Fleischut: I'd like to have that list of names rechecked.

Trial Examiner: The eighteen names?

Mr. Fleischut: The names of those who have not requested reinstatement according to the witness.

Trial Examiner: How many are there?

Mr. Fleischut: I believe there is eighteen.

Gordon D. Ferrell—Re-Direct.

Trial Examiner: As I understand, counsel is willing to do that.

Mr. Wayman: We have no objection to doing that. I suppose they are the ones that are marked with an "N"?

Mr. Fleischut: Or an "NT".

Trial Examiner: Just what grounds do you have for raising this?

Mr. Fleischut: At least one of the individuals that is listed there as not having requested reinstatement said he [278] went to the office and made application for reinstatement.

Mr. Murphy: May we have the name so we can check it?

Mr. Fleischut: Wilford Hamm.

Mr. Murphy: Was this allegedly after this list was given to the Labor Board?

Mr. Fleischut: I don't know, sir. I don't know.

Mr. Wayman: We have no objection to checking to see if Mr. Hamm made a request for reinstatement. I don't think we are required to do it, and I don't think it is a part of this case, but we don't mind cooperating to that extent so we can move along.

Trial Examiner: All right; as long as you agree to do it or volunteer to do it, all right. I suppose it would not take too long to do that.

Mr. Wayman: I can't answer that because I don't know where these files may be.

Gordon D. Ferrell—Re-Direct.

- Q. (*By Mr. Fleischut*) Mr. Ferrell, in granting super-seniority to some employees, does that have a relative effect on all employees?

Mr. Wayman: Now, I'm going to object to that, because it has absolutely nothing to do with the limited purpose for which this witness was recalled to check this layoff list.

Trial Examiner: I thought you had finished with this witness with the exception of recalling him to get this additional information on General Counsel's Exhibit 43.

Mr. Fleischut: May I ask the question or not?

Trial Examiner: The witness can give his opinion on it. That's all it is.

The Witness: Would you restate the question, please?

- Q. (*By Mr. Fleischut*) Granting super-seniority to some employees, does it have any relative effect on all employees?

A. On all employees? No, sir.

- Q. It does for the purpose of layoff and recall, does it not?

Mr. Wayman: Now he is arguing with the witness.

Trial Examiner: You are arguing with the witness. I will sustain the objection.

- Q. (*By Mr. Fleischut*) Does it have a relative effect on all employees for the purpose of layoff and recall?

A. No, sir.

Gordon D. Ferrell—Re-Direct.

Q. Does it have a relative effect on all employees with less seniority?

A. Yes.

Mr. Wayman: I'm going to object. I'm going to object to that.

Trial Examiner: Just what are you trying to prove on this? Super-seniority affects the layoff and recall procedures?

Mr. Fleischut: I am trying—well, that it has a relative effect on all employees with lesser seniority.

[280] *Mr. Wayman:* That's like trying to prove the moon is in the sky. We can go out and look at it.

Mr. Fleischut: The witness has answered "Yes" to the question.

Mr. Wayman: I'm objecting to the question.

Trial Examiner: It may stand.

Mr. Wayman: The witness answered before I objected.

Trial Examiner: It may stand. I will overrule your objection.

Mr. Fleischut: Now the witness may leave the witness stand. I have no further questions.

Trial Examiner: How about your exhibit 43?

Mr. Fleischut: I want it offered in evidence, yes.

Trial Examiner: Any objection?

Mr. Wayman: I have no objection.

Gordon D. Ferrell--Re-Direct.

Trial Examiner: General Counsel's Exhibit 43 may be received in evidence and so marked.

(The document heretofore marked General Counsel's Exhibit No. 43 for identification was received in evidence.)

* * * * *

[287] *Mr. Wayman:* Counsel for the General Counsel has just shown me a paper which seems to be entitled "Erie Resistor Corporation Seniority List" and also appears to be an IBM compilation showing seniority date, name and clock number, and it does appear to be the list the company furnished the union as of March 15, 1959. There are a number of pencil or pen notations on it, which I am sure were not on there when furnished, and should be disregarded.

I would stipulate, subject to check, which I think will disclose it is correct, that this is the seniority list as of March 15, 1959, and it may be introduced in evidence. I should like a copy if I can't find one myself, but I think I can.

Mr. Fleischut: May this be accepted into evidence as General Counsel's Exhibit 45?

(The document above referred to was marked General Counsel's Exhibit No. 45 for identification.)

Trial Examiner: All right, the list may be received in evidence as General Counsel's Exhibit Number 45.

(The document heretofore marked General Counsel's Exhibit No. 45 for identification was received in evidence.)

* * * * *

Gordon D. Ferrell—Direct.

[303] *Mr. Wayman:* Now, if I understand the proposition correctly, the General Counsel would like us to stipulate to these three propositions regarding these three employees as a result of his examination of these personnel cards.

Mr. Fleischut: That is correct, sir.

Mr. Wayman: The stipulation he would like to have is this: Jean S. Good, who replaced Alice Krolak, resigned on July 17th of '59.

Hugh L. Nelson replaced Rolland Myers on Job Number 530. Myers was on Job Number 529.

Carol N. Ripley, who replaced Edith Chizmadia, quit on September 11, 1959.

* * * * * * *

[307] GORDON D. FERRELL a witness called by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Trial Examiner: You have been sworn before in this proceeding, and you are still under oath.

DIRECT EXAMINATION

Q. (*By Mr. Wayman*) Now, Mr. Ferrell, I am sure you recall the negotiations with the IUE in 1959, do you?

A. Yes.

Q. When was the first meeting held?

A. On February 10, 1959.

Q. Will you tell us briefly, and in your own words, what transpired at that meeting?

A. At this meeting, as usual, we began by discussing the ground rules as far as the meeting place, the

Gordon D. Ferrell—Direct.

hours we would meet, the position that each—the company and the union—took on communications during the negotiations, and, with the beginning of the exchange of proposals, we also reiterated the customary rule we had always gone by in connection with making tentative agreements on sections as we went through the contract, with the understanding, of course, that none of these became binding and final until it was a complete agreement on the entire contract.

- Q. Now, you have mentioned that the union and the company [308] exchanged proposals.

Mr. Wayman: I'm going to ask that this booklet be marked Respondent's Exhibit 2.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 2 for identification.)

Mr. Wayman: I would say in this connection I have only the one copy, but I will procure an additional copy so we have a duplicate in the record. I am sure the union has a number of copies of this paper.

Trial Examiner: All right, go ahead.

- Q. (*By Mr. Wayman*) Mr. Ferrell, I show you this booklet which has been marked for identification as Respondent's Exhibit 2, and ask you what that is.
- A. This booklet contains the contract proposal of Local 613, IUE, AFL-CIO, which was given to the union—or given to the company—I am sorry—by the union on the first meeting of February 10, 1959.

Mr. Wayman: I will offer respondent's Exhibit 2. Would you let Mr. Fleischut see it, please?

And, by way of explanation, this is background. We don't intend to go into the tedious disposition of all of these various issues, but simply to show what was there at the beginning of this negotiation.

Mr. Fleischut: Admissibility is stipulated.

Trial Examiner: All right, the booklet may be received [309] in evidence, marked as Respondent's Exhibit 2.

(The document heretofore marked Respondent's Exhibit No. 2 for identification was received in evidence.)

Q. (*By Mr. Wayman*) When was the next meeting, Mr. Ferrell?

A. The next meeting following—

Q. Yes.

A. I will have to refer to my notes on that.

Q. Look at General Counsel's Exhibit 2.

A. The next meeting was held on February 17th.

Q. I will ask you whether or not the company handed the union a set of proposals on that day?

A. Yes, we did.

Mr. Wayman: I am going to ask this very attractive booklet be marked as Respondent's Exhibit 3.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 3 for identification.)

Gordon D. Ferrell—Direct.

- Q. (*By Mr. Wayman*) I show you this booklet which has been marked for identification as respondent's Exhibit 3, and ask you what that is, Mr. Ferrell.
- A. This is the company proposals which were presented to the union at the second meeting on February the 17th.
- Q. Now, will you explain very briefly to us how this booklet is made up?
- A. Yes. Immediately inside the cover there is a list of [310] those contract sections which the company was proposing no change on. On the second page is a list of the contract sections on which the company had proposed or was proposing changes.
- Q. Now, if you will look inside the book, I have observed there is writing on the back of some pages. Will you find such a page, and tell us the number and explain what that represents?
- A. This booklet was put together in chronological order by sections of the contract, and in each of those sections where the company had a proposal the proposal was set into the book so when the book was opened to that section the current section appeared on the righthand page and the company's proposal on the lefthand page.
- Q. You are looking at a particular page?
- A. The first example is Section 8.
- Q. What page is that?
- A. These pages are not numbered. They are by sections. That is Section 8.

Mr. Wayman: I will offer Respondent's Exhibit 3 in evidence.

Mr. Fleischut: Stipulated.

Gordon D. Ferrell—Direct.

Trial Examiner: All right, the proposals may be received in evidence as Respondent's Exhibit Number 3; the company's proposals.

[311] (~~The~~ document heretofore marked Respondent's Exhibit No. 3 for identification was received in evidence.)

Q. (*By Mr. Wayman*) At this meeting did the union hand you a further formal proposal?

A. Yes, they did.

Mr. Wayman: I will ask this document be marked Respondent's Exhibit 4, please.

(~~Thereupon~~ the document above referred to was marked Respondent's Exhibit No. 4 for identification.)

Q. (*By Mr. Wayman*) ~~Mr.~~ Ferrell, I will show you a document or booklet which has been marked Respondent's Exhibit Number 4 for identification, and ask you what that is.

A. This was an additional proposal which the union brought in on SUB, or Supplemental Unemployment Benefits.

Q. On what date was that?

A. This is dated April 1, 1959.

Mr. Wayman: I will offer Exhibit 4.

Mr. Fleischut: Stipulated.

Trial Examiner: It may be received in evidence, marked Respondent's 4.

(The document heretofore marked Respondent's Exhibit No. 4 for identification was received in evidence.)

Gordon D. Ferrell—Direct.

[312] Q. (*By Mr. Wayman*, Mr. Ferrell, as I understand your previous testimony, you were the chief spokesman for the company in these meetings?

A. Yes.

Q. Did you have further negotiations, further negotiation meetings, with the union between February 17th and March 31st?

A. Yes, we did. A total of twenty-two in all.

Q. Mr. Ferrell, I will ask you whether or not at my request you prepared a chart showing the issues as of various dates, beginning with March 31st and continuing on through until the contract was signed on July 17th?

A. Yes, I have.

Mr. Wayman: May we go off the record for a moment, sir?

Trial Examiner: All right, off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Wayman: I will ask this chart be marked Respondent's Exhibit 5.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 5 for identification.)

Q. (*By Mr. Wayman*) Mr. Ferrell, I show you a chart which has been marked for identification Respondent's Exhibit 5, and ask you what that is.

A. This is a chart of the post-strike meetings and issues [313] during the period of the strike, from April 1st until July 17th, 1959.

Gordon D. Ferrell—Direct.

Q. What is the source of this information you have plotted on this chart?

A. The source of this information is my own negotiating notes taken at the meetings, referred to during the strike.

Mr. Wayman: I will offer Respondent's Exhibit 5 in evidence.

Mr. Fleischut: There is no objection to its acceptance into evidence. However, that lack of objection does not concede the accuracy of the material.

Trial Examiner: All right, the chart may be received in evidence, and marked as Respondent's Exhibit Number 5.

(The document heretofore marked Respondent's Exhibit No. 5 for identification was received in evidence.)

Mr. Wayman: For the convenience of the Trial Examiner I would like to hand him Respondent's Exhibit 5, and my procedure will be to ask Mr. Ferrell to testify regarding each of the issues set forth on that exhibit.

Q. (*By Mr. Wayman*). Mr. Ferrell, the first issue which I see on Exhibit 5 is entitled "Wages". Will you tell us the situation regarding the wage issue as of March 31, 1959?

A. Yes, sir. The union had originally asked for twenty-five cents an hour across the board. By the end of our session on [314] March 31st the union's demand for wages was nine cents an hour across the board.

Q. Will you tell us when the next change in position by either the company or the union took place with regard to this issue?

A. Yes. On the meeting of April 21st, the union made a proposal that the company—that they could not agree to a wage increase—if they would consider paying for the group insurance. We have a contributory plan in which both the employee pays into—a portion of the premium—and the company pays a portion. And the union's proposal was that the company pay the entire cost of the group insurance in lieu of the wage increase.

Q. Did you agree to that proposal?

A. No, we did not.

Q. What was the next proposal or change in position on this issue?

A. Two meetings later, on April 28th, the union again made a proposal to provide for a wage reopener in a period of six months again on the assumption that if the wage increase was not possible at the present time that perhaps in six months or so things might improve to a point we would be able to do something about it.

Q. That's what the committee told you?

A. This is the discussion that took place.

[315] Q. All right, what was your response?

A. We did not agree to a wage reopener.

Q. And when was the next change in position or proposal made on this issue of wages?

A. I might say that the union's proposal on April 28th, request for reopener, included the right to strike or arbitrate. It was this that the company refused to agree to. Then on May 6th, to get on with this, the union next proposed that this issue be settled by arbitration.

Gordon D. Ferrell—Direct.

- Q. What was your response to that?
- A. The company's response to this was we would not agree to resolve this issue through arbitration, that we would consider a wage reopener in six months without the right to strike.
- Q. When was the next change in position or proposal on this issue?
- A. At the very next meeting, on May 13th, the company was still going to consider a wage reopener without the right to strike, and the union suggested a fact-finding board rule on this matter of wages.
- Q. Was there any agreement?
- A. There was no agreement.
- Q. What was the next change in position or proposal on this issue?
- A. There were no new proposals on either side. I am sure we [316] discussed a reopener and the arbitration and the fact-finding board sometime between the times they were introduced and the time this issue was finally dropped.
- Q. Was the issue formally dropped?
- A. I do not find in my notes it was formally dropped. I find no discussion of it after our meeting of June 2nd. This is why I discontinued it on the chart as of that point.
- Q. In other words, there was no formal agreement?
- A. There was just simply no more discussion?
- A. That is right.
- Q. What is the next issue that you have there as of March 31st?
- A. The next issue is Sub-contracting, or Section 6.
- Q. Will you tell us—
- A. Actually the name or heading, title of this section, is "Company Prerogatives", but the particular por-

tion of the section in dispute was that having to do with sub-contracting.

Q. What was the union's position on this point as of March 31st?

A. The union was insisting the company not farm out work or sub-contract work as long as they had employees on layoff.

Q. Did you agree to that?

A. No, we did not.

Q. What was the next change in position or proposal regarding this item?

[317] A. This issue was resolved on the meeting of April 21st.

Q. And how was it resolved?

A. At this time, after further discussions with the union, we discovered the thing that was most crucial to them was if there were people on layoff who, particularly in the skilled trades, who could perform certain repair and maintenance work, that they be called in to do this, even on a temporary basis, if it became necessary to have this work performed while they were on layoff. The company made a proposal which added a paragraph to Section 16, which is the Recall Section of the contract, to provide that we would call in employees who were qualified to do this particular kind of work, if it became available, where any of them were on layoff.

Q. Is that what happened in the contract of July 17th?

A. Yes, sir. We reached an agreement on this issue, and this took care of the problem we had on Section 6.

Q. What was the next issue you have on your chart?

A. The next issue is the seniority section of the contract. Section 8.

Gordon D. Ferrell—Direct.

Q. Now, can you tell us what was in dispute between you and the union as of March 31st on that point, on that section?

A. This section, much like the previous one, had one particular part of it which was in dispute. Not the whole section was in dispute. The section or the portion of the section [318] in dispute had to do with those employees which were transferred out of the bargaining unit, promoted or transferred to supervision or quality control or some other class of work which was not included in the certified bargaining unit. These people also enjoyed the right to be returned to the bargaining unit when, due to lack of work, they were no longer needed on the job to which they had been promoted or transferred. During the time they were out of the bargaining unit they accumulated seniority under the contract.

The union felt that these people should not accumulate seniority when they were out of the bargaining unit, and their request or demand was that we freeze the seniority of employees who were transferred out of the bargaining unit, and this got down to a very technical point there in the final discussions.

Q. Let's not go to the final discussions just yet. We are at March 31st right now.

A. This is pertinent. It got down to where quality control inspectors were the specific group the union was concerned about, because, in order to make this clear, the union recognized that supervision, under the Act, was excluded, they were excluded from representing supervisors, so they did not object to seniority being accumulated for supervisors. They

Gordon D. Ferrell—Direct.

did object to it being accumulated for quality control inspectors, and this was an issue.

Q. This was the situation, as I understand it, on March 31st?

A. Yes, sir.

Q. Now, will you tell us the next date on which there occurred any proposal or change in position on this issue?

A. Of course it was discussed at all of the meetings, from the first moment, to try to resolve this further, and that occurred on April 24th. The union made a proposal at this meeting that if we were going to insist on accumulated seniority for these people while they were out of the bargaining unit then the least we could do would be to provide that the junior person in the quality control group would be transferred back into the bargaining unit whenever a reduction of force was necessary in the quality control group. This we could not do or agree to because our quality control inspectors—

Q. I don't think you need to give the reason. You did not agree to it?

A. We did not agree.

Q. When was the next change in position of the parties on the issue?

A. Because the union was taking the position we transfer these people back into the bargaining unit meant a bargaining unit employee in the end would be bumped out, and this was one of their main complaints about putting quality control people back in the bargaining unit. Because of this, the company [320] made a proposal that no bargaining unit employee would be laid off as a result of transferring

Gordon D. Ferrell—Direct.

one of these quality control people back into the bargaining unit. We thought this would satisfy the union and the problem, but it did not. It was not accepted.

Q. When was this proposal made by the company?

A. On April 28th.

Q. There was no agreement on that date?

A. There was no agreement.

Q. When was the next move or change in position on this issue?

A. Because this was not accepted, the company withdrew this offer on the following meeting, on April 29th.

Q. All right. What was the next move or change of position?

A. At the next meeting, on May 5th, the company made another proposal to the union, in which we agreed that we would freeze seniority for anyone who was transferred out of the bargaining unit in the future, but we could not agree to freeze the seniority of these people that had been moved out under the previous existing rules, which provided they be accumulative.

Q. Was there any agreement on this proposal?

A. No agreement was reached.

Q. What was the next move or change in position?

A. On May 6th you recall that the union had proposed that [321] we arbitrate wages, and, in fact, all issues, and this issue of seniority for quality control inspectors was included in this offer to arbitrate.

Q. Did you agree?

A. No, sir. We did not.

Q. When was the next move or change in position?

A. The next change, the next meeting was May the 11th, and again the union had proposed submitting these issues to a fact-finding board, and that concluded this issue.

Q. Did you agree on that?

A. No.

Q. When was the next move or change in position?

A. We agreed on a solution to this problem at the meeting on May 22nd, which was similar to the company's second proposal that had been made on May 5th. We agreed to freeze seniority for those transferred out in the future, and there was one additional feature, that if one of these people was transferred back into the bargaining unit they then would not bump into seniority or bump in at the bottom of the seniority list.

Q. Was this a change from your prior contract provision?

A. Yes, it was.

Q. Was this solution you agreed upon what finally appears in the contract of July 17th?

A. Yes, it is.

Q. What is the next issue you have on your chart?

[322] A. The next issue had to do with vacation, or Section 48 of the contract.

Q. And as of March 31st what was the situation regarding that issue?

A. The union was demanding three weeks' pay, three weeks' paid vacation, after ten years of service. Our contract previously had provided for two weeks' vacation after five years.

Gordon D. Ferrell—Direct.

Q. Had you made any proposal to the union on vacations?

A. Yes, we did. We proposed there be two weeks of paid vacation after three years.

Q. Was this a change from your prior contract provision?

A. Yes. It was a change from five years to three years for two weeks vacation.

Q. Was this an open issue on March 31st?

A. Yes, it was.

Q. When was the first move or change in position after March 31st?

A. I think, as already testified to on April the 8th, this issue was dropped by the union.

Q. Did the union accept your proposal of two weeks vacation for three years of service?

A. Yes, it did.

Q. Is that what finally appears in the contract of July 17th?

[323] A. Yes, sir.

Q. What is the next issue you have on the chart?

A. The next issue has to do with our group insurance. As I said before, this is a contributory plan, in which the employee pays a portion of the cost and the company pays a portion of the cost.

Q. All right. As of March 31st what was the situation on that?

A. As of March 31st the union was asking if there be any increase in the cost of the insurance during the contract year that the company would pick up the tab on the difference, on the increase.

Q. What was the company's position on that?

A. The company did not agree to do this.

Q. When was the first change in position to move on this issue after March 31st?

A. On the meeting of April 8th the union also dropped this issue.

Q. You had made no offer on that issue, had you?

A. I beg your pardon?

Q. You had made no offer on this issue?

A. Only to continue the present contributory plan we had in effect.

Q. And is that what finally happened under your new contract in July?

[324] A. Yes, sir.

Q. What is the next issue you have on your chart?

A. The next issue has to do with the mechanics of our upgrading, transferring and layoff, or the operation of our seniority system, the movement of employees.

Q. Is this what is sometimes called "musical chairs"?

A. Yes. And this embraces the sections of the contract 11 through 16.

Q. Now, will you tell us the status of this issue on March 31st? Let say at the beginning of the meeting on March 31st?

A. Throughout negotiations, from the very beginning, the company had done everything possible to impress the union with the seriousness of this problem, and what it was doing to our operations, and how difficult it was making it for the company to compete in a very highly competitive field, and that while this system originally had been agreed to when we had relatively simple products, without a great variety or difference between products, it had now become an unbearable—

Mr. Davidson: I now object.

Gordon D. Ferrell—Direct.

Mr. Wayman: I believe that's right.

Q. (By Mr. Wayman) What was the status of this issue at the beginning of the meeting of March 31st? Was the company requesting a change and had the union agreed to it?

A. All right. I—

[325] Mr. Davidson: I would like to move to strike the previous portion.

Trial Examiner: It may stand. All witnesses may do that. Your witnesses do it. Give their own opinions and arguments. It may stand.

The Witness: Up until the final hour on March 31st—the contract expiring at midnight—in an effort to avoid a strike the company reluctantly gave up its position on these seniority sections of Section 11 through 16, in the hopes of resolving our differences and coming out with a contract before it was too late.

Q. (By Mr. Wayman) Was this part of what you might call a package proposal?

A. Yes. The company offered to settle for all of the tentative agreements that had been made up to that point, plus a continuation of all of the other sections of the contract on which no tentative agreement had been reached, provided that both parties would drop any other outstanding issues and we sign a contract and bring our negotiations to a successful conclusion without a strike.

Q. Did the union accept this proposal?

A. No, they did not.

Gordon D. Ferrell—Direct.

Q. Now, will you tell us ~~what~~ happened after March 31st, first with respect to your position.

A. With the strike already two weeks old, we met on April [326] the 14th, and the company made a proposal at this meeting involving certain supplements to Sections 11 through 16.

Q. What was the next move? Were these proposals accepted?

A. No, they were not.

Q. What was the next move or change in position on this issue?

A. As I have already stated, on April 21st we added a paragraph to Section 16 in an effort to resolve the issues on Section 6. This was successful, and did result in a tentative agreement on Section 16, which left 11 through 15, then, in this group.

Q. When did you finally reach an agreement, if you did, on Sections 11 through 15?

A. As has already been stated by Mr. Colella in his testimony, we reached agreement on Sections 12, 13, 14 and 15 on June the 4th, and agreement on Section 11 on the following day, June the 5th.

Q. Now, were the agreements thus arrived at the provisions as they appear in the contract of July 17, 1959?

A. Yes, they are.

Q. What is the next issue you have on your chart?

A. The next issue is not a contractual issue, but as a result of the discharge of some employees because of picketline conduct. This issue got on the table in our meeting of April the 21st, and involved two employees, Val Skiba and [327] Elmer Buren.

Gordon D. Ferrell—Direct.

Q. As briefly as you can, tell us what happened in regard to this issue. In other words, just continue your tale on through until the end.

A. At this meeting of the 21st the union was proposing that these people be reinstated, and on May 5th, in connection with another or a package proposal that the company made, we offered to reinstate Skiba and Buren, but there was no agreement on the package, so the issue was not settled.

Q. What's the next event that occurred regarding the discharged employees?

A. The next thing that occurred when we met on May the 11th, we had had two other incidents involving discharges of employees—and now we had a total of four—in addition to Skiba and Buren. Karpinski and Grafius.

Q. When did these incidents occur, if you know?

A. These incidents occurred in connection with a mass picketing that occurred at the plant on May 7th and 8th.

Q. These two new discharges you say were in connection with that event?

A. Yes, sir.

Q. What happened at the meeting of May the 11th? What happened regarding the discharges?

A. The union of course was also demanding reinstatement of all four discharges now.

[328] Q. Did you agree?

A. No, sir.

Q. What was the next move or proposal regarding the discharges?

A. The next thing that occurred, that we found out about on May the 13th, was that the union had filed

Gordon D. Ferrell—Direct.

charges against the company, in connection with each of these discharges, with the National Labor Relations Board.

Q. Was there any proposal or move in that meeting to dispose of this issue?

A. No, sir.

Q. What was the next move or proposal regarding this issue?

A. The next movement involving this issue, I find I have a notation of, was on June 3rd. At this time the union proposed that the company arbitrate this issue of the four discharges. We reminded the union that they had filed charges with the NLRB, and that they had a remedy; and had chosen this avenue to resolve the issue, and that we would abide by the outcome of it.

Q. What was the disposition of these charges that were filed with the NLRB?

A. The charges were all dismissed.

Q. What was the next move or proposal with regard to these discharged employees?

A. Well, we had another occurrence involved, I believe, on [329] June the 11th. We had a fifth individual by the name of Gilson, who was discharged, and now we had a total of five.

Q. Were any proposals or moves made at that meeting?

A. No, not at that meeting.

Q. When was the next proposal or move on this?

A. At the next meeting, June the 12th, the company proposed reinstating Karpinski and Skiba, with a ninety-day disciplinary layoff.

Q. What did it say with respect to the other three?

A. We were not willing to reinstate them.

Gordon D. Ferrell—Direct.

Q. Did the union agree to this?

A. No, sir.

Q. What was the next move or change in position with respect to this issue?

A. The next move was immediately following the abandonment of the strike. In our meeting on July 7th we proposed that Skiba and Karpinski be reinstated with a thirty-day disciplinary layoff.

Q. And what was to happen to the other three?

A. The other three were to be considered as discharged, and no further discussion.

Q. Did the union accept this proposal?

A. This was finally agreed to in our settlement agreement, strike settlement agreement, on July 17th.

Q. What is the next issue that you have on your chart?

[330] A. The next issue has to do with replacements. This arose for the first time in our meeting of May the 11th. We told the union at this meeting that with the hiring of replacements that we would have a problem on which we were going to have to find some kind of solution, probably in the area of some kind of super-seniority, which would assure these people work after the strike was over.

Q. What did the union say to that?

A. The union took the position that super-seniority was a discriminatory and illegal request, and they didn't want to have any part of it.

Q. What was the next move or change in position by either party on this issue?

A. The next thing of any change was on May 28th, at which time we explained to the union that it looked like this super-seniority was going to have to be a figure in the neighborhood of twenty years, and that,

based on our reductions of our sales and our work force, it appeared that this was what was going to be necessary to carry out our job assurances, our promises to these replacements that were hired.

Q. What did the union say to that?

A. They continued to maintain the same position.

Q. They would not agree?

A. They would not agree.

Q. When was the next move or change in position on this [331] issue?

A. On June the 2nd the union suggested that if we could resolve the strike or resolve our issues and settle the strike and get people to come back to work that we have a thirty-day grace period in which to lay off or work out the turn-over of replacements that we had hired.

Q. In other words, dispose of the replacements?

A. Dispose of the replacements.

Q. Did you agree to this?

A. No, we did not.

Q. When was the next move or change in position or proposal on this issue?

A. The next move that I have noted was on June the 3rd. And which the—I believe the union told us they were filing a charge with the National Labor Relations Board in connection with our replacement policy.

Q. They made no proposal at this meeting, as I understand?

A. That is correct.

Q. What happened next with regard to this issue?

A. In our meeting of June the 11th the company proposed that instead of twenty years super-seniority

Gordon D. Ferrell—Direct.

that perhaps we could work out something on the basis of having seniority equal to the most senior person in the department in which the employee happened to find himself.

Q. Did the union agree to this proposal?

[332] A. No, they did not.

Q. What happened next?

A. At the next meeting on June 12th it was suggested that perhaps the same kind of super-seniority that had always been accorded to union officers and stewards might be applied to these replacements. In other words, that they be the last to be laid off.

Q. Did the union agree to this proposal?

A. No, they did not.

Q. What happened on June 15th, if anything, in this regard?

A. June the 15th was an off-the-record meeting, and I have no notes on it.

Q. What happened next with respect to this issue?

A. The next was a company proposal, again an effort to seek an agreeable solution to this thing. We offered to consider these replacements as red-circle employees.

Q. Was there any agreement on this proposal?

A. There was no agreement on it.

Q. What happened next?

A. June the 24th there was some further discussion about the disposition of this issue through the National Labor Relations Board and the Courts.

Q. Was there any agreement on this proposition?

A. Not on that day, no, sir.

Q. What happened next?

[333] A. At our meeting on July 7th the union proposed dropping their National Labor Relations

Gordon D. Ferrell—Direct.

Board charge if the company—between a period of thirty and sixty days—would agree to let the replacements go and bring other people back to work.

Q. Did the company agree on this?

A. No, sir.

Q. What happened next?

A. This issue was finally disposed of in the strike settlement agreement between the company and the union, in which we left this issue to be decided by the NLRB and the Courts.

Q. If I am not mistaken, in response to a subpoena from Mr. Fleischut you produced that strike settlement agreement, and it is in evidence as General Counsel's Exhibit 27. Would you just look at General Counsel's Exhibit 27, please, and confirm that?

A. Yes, this is the document.

Q. Will you read for us the portion of that agreement which disposes of this issue?

Mr. Fleischut: I object to that. It's in evidence.

Mr. Wayman: I think we ought to refer to it. We have referred to part of this agreement. It is in evidence, is that true?

Trial Examiner: Oh, yes, it is in evidence, but go ahead. I'll overrule your objection.

The Witness: "The company's replacement and job assurance [334] Policy to be resolved by the NLRB and the Federal Courts, and to remain in effect pending final disposition."

Q. (By Mr. Wayman) Thank you. What is the next issue that you have on your chart?

A. The next issue is Union Shop, or Section 2 of the contract.

Gordon D. Ferrell—Direct.

Q. When did this become an issue?

A. This became an issue on May 14th.

Q. What did you tell the union, in words, as near as you can remember, at this meeting on May 14th regarding this item?

A. The company withdrew its former tentative agreement on Section 2, the reason for this being—

Q. Did you tell the union why?

A. Yes.

Q. Will you tell us what you told them?

A. Yes. The reason being the threats of fines and dues and so on which the union had made upon employees, and the fact that replacements had come to work and were being subject to abuse on the picket line and harassment at home, and that we felt these people should not be required to work under a contract providing for a union shop whereby they would be forced to belong to the union as a condition of employment.

Q. Was there any agreement on this issue that day?

A. No, sir.

[335] Q. What next happened with respect to this issue?

A. The company made a proposal on May 22nd that we would agree to a maintenance-of-membership provision.

Q. Was there any agreement on that?

A. No agreement was reached on that date, no, sir.

Q. Tell us how the maintenance-of-membership provision differed from the union-shop provision.

A. Yes.

Q. In your proposal.

A. Under a maintenance-of-membership an employee is free to join the union or not to join, as he chooses.

Once he does join, however, he is required to continue to pay his dues for the duration of the contract and to remain a member in good standing.

Q. Was this different than the provision in your previous contract?

A. Yes, sir. The union-shop provision in the previous contract provided that all employees must be members of the union after a thirty-day probationary period, and remain members in good standing in order to continue as employees.

Q. What next happened with respect to this issue?

A. There was no further change in position on this issue, and it was finally resolved by agreement on maintenance-of-membership. I have the final agreement on July 15th.

Q. And was it finally incorporated in the contract of July [336] 17th?

A. Yes, it was.

Q. What is the next issue you have on your chart?

A. The next issue has to do with check-off of union dues under Section 3 of the contract.

Q. Will you tell us when that first became an issue?

A. This became an issue on May 14th, and was withdrawn—our former tentative agreement was withdrawn—at the same time that the tentative agreement on union-shop was withdrawn.

Q. Did you discuss these two issues together?

A. Yes, we did.

Q. Will you tell us what next occurred with respect to this issue?

A. Yes. The only change that the company proposed in this section was that the escape period be provided thirty days after the signing of the contract instead

Gordon D. Ferrell—Direct.

of thirty days before the expiration of the contract, as it was in the current agreement.

Q. Was there any agreement on this proposal?

A. Yes. We agreed on this change on June the 4th.

Q. Is that what finally appeared in the contract of July 17th?

A. Yes.

Q. What is the next issue you have on your chart?

A. The next issue has to do with the seniority of union [337] officers, section 18.

Q. When did this become a union offer?

A. On May 14th.

Q. On May 14th. Did you tell the union why you withdrew the tentative agreement?

A. Yes.

Q. What did you say?

A. We said this was being withdrawn because of the—I believe the words were “the irresponsibility of the union officers and their conduct in control of the strike.

Q. Were there any proposals or movements on this issue subsequently?

A. We made a proposal on June 2nd that this section be continued in the contract with some limitation on the number of officers, and suggested eight top officers of the Local.

Q. Was there any agreement on this?

A. No, this was not agreed to.

Q. What next happened with respect to this issue?

A. Two meetings later, on June 4th, we did revise this section to enumerate the eleven top officers of the Local, and this was agreed to.

Q. And is this what finally appeared in the contract of July 17th?

A. Yes.

Q. What is the next issue you have on your chart?

[338] A. The next issue has to do with seniority of union stewards, or Section 19.

Q. When did that first become an issue?

A. Also on May 14th.

Q. Was this at the same time?

A. Same time as the other three, Sections 2, 3 and 18.

Q. Will you tell us what happened with regard to this issue, please?

A. The proposal was made on May 22nd that union stewards have no super-seniority.

Q. Was there any agreement on this?

A. No, sir.

Q. What next happened?

A. This issue was resolved, without any further complications, on June the 4th. At that time we agreed to continue the provisions of Section 19 as they had been in the contract.

Q. Is that what appeared in the contract of July 17th?

A. Yes.

Q. In other words, the same as the prior contract?

A. Yes.

Q. Have you any more issues on your chart?

A. No, sir.

Q. Does this fairly state the issues that were discussed between you and the union during the strike and after the strike, up until the contract was signed?

[339] *Mr. Fleischut*: I object to that.

Trial Examiner: I hope it does.

Gordon D. Ferrell—Direct.

The Witness: In condensed form, yes.

Trial Examiner: This is just sort of a summary, and I thought that was stated even at the beginning of his testimony.

Mr. Wayman: That is correct.

Trial Examiner: You may answer.

The Witness: This certainly is an abbreviation, and not a complete history of everything that happened. These are the significant things that happened, as I saw them.

Trial Examiner: Are you going to start a new line of questioning?

Mr. Wayman: Yes.

Trial Examiner: I think we had better take about a ten-minute break here.

(Recess.)

Trial Examiner: All right, the hearing will be in order. Go ahead, Mr. Wayman.

Q. (By Mr. Wayman) Mr. Ferrell, in your capacity as Director of Industrial Relations, did you become aware of a company policy to employ replacements?

A. Yes, sir.

Q. When did you first become aware of that policy? As nearly as you can come?

[340] A. A day or two prior to the letter the company issued on May 3rd.

Mr. Wayman: I will ask this document be marked Respondent's Exhibit 6.

Gordon D. Ferrell—Direct.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 6 for identification.)

Trial Examiner: Just for the record, the letter you referred to—or the witness referred to—as May 3rd, that's General Counsel's Exhibit Number 7?

Mr. Wayman: I believe it is, sir, but we will check it.

Mr. Murphy: Yes.

Mr. Wayman: That is correct.

Q. (By Mr. Wayman) Mr. Ferrell, I show you a clipping from a newspaper which has been marked for identification as Respondent's Exhibit 6, and ask you what it is, if you recognize it.

A. An article that appeared in the Erie Times on Monday, May the 4th.

Q. So we can identify it in the record, will you just read the heading, the headline?

A. Yes. The headline states "Resistor plants to start hiring".

Q. Did this article, to your knowledge, appear in that paper on that day?

A. Yes, it did.

Q. And I think we have established the Erie Times is a Newspaper of General circulation in the Erie area?

Trial Examiner: Yes, that is already established in the record.

Mr. Wayman: I offer Respondent's Exhibit Number 6.

Mr. Fleischut: No objections.

Gordon D. Ferrell—Direct.

Trial Examiner: Any objection?

Mr. Fleischut: No.

Trial Examiner: The newspaper clipping may be received in evidence and marked Respondent's Exhibit Number 6.

(The document heretofore marked Respondent's Exhibit No. 6 for identification was received in evidence.)

Mr. Wayman: I will ask this newspaper clipping be marked Respondent's Exhibit 7.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 7 for identification.)

Mr. Fleischut: What is the purpose of offering this exhibit?

Mr. Wayman: The purpose of offering this exhibit is to show the people in the Erie area knew what was going on at the Resistor plant, and it necessarily would have an effect on anybody that intended to go to work there.

Mr. Davidson: I take it you are not offering it to [342] establish the contents as stated in it? You are offering it to establish this was in the newspaper?

Mr. Wayman: This was in the newspaper of general circulation in this area, and it is a fair inference that people read it, since it was on the first page on that date.

Mr. Fleischut: And not as to the proof of the truth of the material therein contained?

Gordon D. Ferrell—Direct.

Mr. Wayman: We will prove that by witnesses if it becomes necessary. This is offered to show what did appear in the newspaper and what people in the area read.

Q. (By Mr. Wayman) I'm going to show you this clipping from a newspaper, which has been marked for identification as Respondent's Exhibit 7, Mr. Ferrell, and ask you whether or not to your knowledge that appeared in the Erie Daily Times and on what day.

A. Yes, this article appeared on the front page of the Erie Daily Times on May 7, 1959.^s

Q. And, for the purpose of identifying it, will you just read the headline, the streamer headline?

A. Yes.

Mr. Davidson: I object to it. If it's going in evidence it will be identified.

Trial Examiner: He may read the headline. I don't see that it is too long.

The Witness: The headline states "Act to Re-open Resistor [343] Plant. Closed to Avert Violence."

Mr. Wayman: I will offer respondent's Exhibit 7.

Mr. Davidson: I say there may be an awful lot of things in the Erie area that the people may be aware of from the daily press, but I don't think certainly the fact this was in the press is relevant to what the company is doing on these dates. At least at this point I don't see it. If it becomes relevant later on, that would be the appropriate time to raise it.

Gordon D. Ferrell—Direct.

Mr. Wayman: One of the questions is whether or not it is reasonably necessary in these cases, as I understand it, to give some assurance to people that they will be continued on the jobs that they take, when they cross a picket line, after the strike is over.

One of the matters considered by the Courts in this connection is the existence of violence, the atmosphere in the community, and the concern of these people, their apprehension lest they suffer some loss by crossing the picket line.

Trial Examiner: Are these simply newspaper reports of the situation, as distinguished from quoting company officials?

Mr. Wayman: That is correct, sir.

Trial Examiner: They are just newspaper accounts?

Mr. Wayman: That's correct.

Trial Examiner: I don't think they are too material, myself. I don't know what they might prove. I will accept in evidence Respondent's Exhibit Number 7, but if you had in [344] mind putting in any series of these newspaper items, then I am not going to take that. I thought perhaps the one of May 4th, Respondent's Exhibit 6, may have had some bearing, that the plant was going to reopen.

Mr. Wayman: That does—that does quote the company.

Mr. Fleischut: That's number 6, which quotes a company official. As to that, we have no objection. But as to the other, I register an objection.

Gordon D. Ferrell—Direct.

Mr. Wayman: I have one other similar to Number 7.

Mr. Fleischut: The objection is on the same basis as Number 7.

Mr. Wayman: I haven't offered this. It isn't even marked.

Trial Examiner: Anticipatory. I will receive Number 7.

(The document heretofore marked Respondent's Exhibit No. 7 for identification was received in evidence.)

Mr. Fleischut: Are you offering the material on the reverse side?

Mr. Wayman: Not unless it's a continuation.

Mr. Davidson: I would certainly object to putting in a part of the document.

Mr. Wayman: May I see it, please?

Mr. Davidson: The same objection applies to this as to the other one. Is this the last one of these?

Mr. Wayman: That's the last one of these, yes.

Mr. Fleischut: Let the record indicate the objection to Exhibit 8, as well as 7.

Mr. Wayman: I think we ought to have it marked first.

Trial Examiner: Yes, get it marked.

Mr. Wayman: Will the reporter please mark this newspaper article as Respondent's Exhibit Number 8.

Gordon D. Ferrell—Direct.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 8 for identification.)

Mr. Wayman: I think the record should show I have shown this already to the General Counsel and counsel for the charging party.

Q. (*By Mr. Wayman*) Now, I will ask you, Mr. Ferrell, to look at Respondent's Exhibit 8 for identification, and tell us what that is.

A. Part of the front page of the Erie Daily Times for May 8, 1959.

Q. To your knowledge did that article appear in that paper on that day?

A. Yes, it did.

Mr. Wayman: I will offer respondent's Exhibit 8.

Mr. Fleischut: The admission is objected to.

Trial Examiner: I understand it is objected to, but, since I have received the prior clipping in evidence, I will receive [346] this, number 8 in evidence. I question the materiality of it.

(The document heretofore marked Respondent's Exhibit No. 8 for identification was received in evidence.)

Mr. Wayman: I am going to ask that this newspaper advertisement be marked Respondent's Exhibit 9.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 9 for identification.)

Gordon D. Ferrell—Direct.

Q. (*By Mr. Wayman*) Mr. Ferrell, I show you a newspaper advertisement which is marked for identification as Respondent's Exhibit 9, and ask you what that is.

A. This is a paid ad which appeared in the Morning News on Wednesday, May 13, 1959. It is an open letter to the citizens of the Erie community. It is an ad that was written and paid for by the then-working employees of Erie Resistor.

Mr. Wayman: I will offer Respondent's Exhibit 9.

Mr. Fleischut: This—

Mr. Davidson: The same objection. I think we are beginning to pad the record with a lot of irrelevant and inflammatory records. It doesn't prove the truth of the context. This is dated after the date, as far as I am aware, the company made its decision, and I see no relevance or materiality at all.

Mr. Wayman: Of course, the violence and terrorism business stopped on May 11th.

Mr. Fleischut: I object to counsel testifying.

[347] *Mr. Wayman:* We will put in our evidence on that, as I indicated. We have to do it in some order, and we can't do it simultaneously. I said I would put in evidence on violence and the violation of the law of Pennsylvania last because we have to give it some order. We could save this for that point, but I think if this witness has personal knowledge of it he can testify to that.

Trial Examiner: This was paid for by the employees?

Gordon D. Ferrell—Direct.

Mr. Wayman: Mr. Ferrell, do you know?

The Witness: Yes, sir.

Trial Examiner: All right, I will receive it in evidence.

Mr. Fleischut: Note an objection, please.

Trial Examiner: Yes, you both have an objection.

(The document heretofore marked Respondent's Exhibit No. 9 for identification was received in evidence.)

Mr. Wayman: I am going to ask this document be marked for identification as Respondent's Exhibit Number 10.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 10 for identification.)

Q. (*By Mr. Wayman*) Mr. Ferrell, I show you a document marked for identification as Respondent's Exhibit Number 10 and ask you what that is.

[348] A. That is a letter dated May 13, 1959, that was mailed to all interested individuals who had contacted the company expressing a desire to return to work.

Q. Who signed this letter?

A. I did.

Mr. Wayman: I will offer respondent's Exhibit 10 in evidence.

Mr. Davidson: Again I object. This is a completely self-serving document, no indication as to

Gordon D. Ferrell—Direct.

what prompted this thing. It makes a number of negative statements, some affirmative and some negative. This is what the company sent to the employees. I don't see what this proves.

Mr. Fleischut: It has no probative value.

Trial Examiner: It was sent to all interested individuals. What was the rest of that description?

Mr. Wayman: Who expressed a desire to return to work. One of the important points, for example, it says "The company guarantees you will not be discharged because of returning to work at this time."

Now, one of the questions is what did we tell these people when they came in, and this is what we told them.

Mr. Fleischut: There is a pencilled notation at the top. Is that meant to be a part of the exhibit?

Mr. Wayman: No, it is not.

Mr. Fleischut: That may be disregarded?

[349] *Mr. Wayman:* Yes.

Trial Examiner: Are you offering that in evidence?

Mr. Wayman: Yes, I am.

Trial Examiner: I will overrule the objection and receive the letter in evidence as Respondent's Exhibit Number 10.

Mr. Fleischut: You noted General Counsel's Exhibit Number 10?

Gordon D. Ferrell—Direct.

Trial Examiner: Yes.

(The document heretofore marked Respondent's Exhibit No. 10 for identification was received in evidence.)

Q. (By Mr. Wayman) Mr. Ferrell, will you tell us whether or not this letter was also posted on the bulletin boards within the plant?

A. Yes, this was posted on the bulletin boards within the plant for the information of the employees working in the plant.

Mr. Wayman: I am going to ask that this four-page document be marked Respondent's Exhibit 11.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 11 for identification.)

Q. (By Mr. Wayman) Mr. Ferrell, I show you a document consisting of four pages which has been marked for identification Respondent's Exhibit 11, and ask you what that is.

A. This is a union proposal dated May 22, 1959, entitled [350] "Strike Settlement Agreement", and was written as a union proposal for resolving the open issues at that time.

Q. Was this presented to you in negotiations?

A. Yes, it was.

Mr. Wayman: I offer respondent's exhibit 11.

Mr. Fleischut: I'd like to ask several questions concerning this document, if I may.

Mr. Wayman: Without the pencilled notations.

Mr. Fleischut: On all of the four pages?

Gordon D. Ferrell—Direct.

Mr. Wayman: On all of the four pages.

Trial Examiner: Do you want to conduct a voir dire examination on this?

Mr. Fleischut: I have no objection, having ascertained that.

Trial Examiner: All right, the proposal may be received in evidence, marked as Respondent's Exhibit Number 11.

(The document heretofore marked Respondent's Exhibit No. 11 for identification was received in evidence.)

Q. (*By Mr. Wayman*) Mr. Ferrell, did you agree on the proposal made by the union which has been introduced as Respondent's Exhibit 11?

A. No, we did not.

Q. Now, Mr. Ferrell, did you at any time in the course of [351] these negotiations following May 3rd tell the union negotiators what the company meant by "replacements"?

A. We told the union that, as far as the company was concerned, that replaced employees were considered as having been terminated and no longer enjoyed the status of an employee of the company.

Mr. Wayman: I have no further questions on direct.

Trial Examiner: Let me ask you this. After you told the union this, and as men were replaced, did you send out any notice of any kind to the strikers who had been replaced?

The Witness: Telling them that they had been—

Gordon D. Ferrell—Direct.

Trial Examiner: Yes. Such as—I don't know what your policy would be, or practice would be. For instance, their insurance had been cancelled, or anything like that?

The Witness: Not during the strike, no, sir.

Trial Examiner: Do you want a few minutes to examine your notes before you start your cross examination?

Mr. Fleischut: It might be helpful, sir.

Trial Examiner: Before that, when was it that you advised the union the replaced employees would be considered as terminated?

The Witness: Any time they asked the question.

Trial Examiner: That was your position throughout the negotiations?

The Witness: Yes.

[352] *Trial Examiner:* Once it was raised, say, around May 11th or 14th?

The Witness: Yes.

Trial Examiner: We will take a five or ten-minute break so he can check his notes.

(Recess.)

Trial Examiner: The hearing will be in order. Go ahead, Mr. Fleischut.

CROSS EXAMINATION

Q. (By Mr. Fleischut) Mr. Ferrell, the very long and informative discourse you gave on the progress of negotiations, were you reciting that information from memory, on the progress of each contract section?

A. Yes.

Q. You were referring to papers, weren't you?

A. I was referring to some notes I had on my chart, yes.

Q. When did you prepare that chart?

A. When?

Q. Yes.

A. Oh, several days ago, within the last week.

Q. For the purpose of testifying at this hearing?

A. Yes.

Q. Do you recall a time in negotiations when the union offered to give up its demand for continued union security shop if the company would arbitrate or drop the super-seniority [353] plan?

A. Do you have a particular meeting that you are referring to?

Q. I am referring to page 14 of your affidavit. Page 14, with reference to on June 11th and June 2nd there was bargaining on the replacement system.

A. June 2nd?

Q. Well, I will read the statement to you. "On June 11th the union, as it had on June 2nd, further bargained with the company concerning the replacement system. It offered to give up its demand for the union shop if the company would either arbitrate or drop

Gordon D. Ferrell—Cross.

the so-called twenty-year seniority plan." Do you recall making that statement?

A. Yes.

Q. And do you recall at that same meeting the union informing you that both the local and international would continue the strike until the company yielded on super-seniority?

A. Yes, this was the meeting of June 11th, is that not correct?

Q. Yes.

A. Yes.

Q. You also testified concerning the events at the close of the strike, concerning the negotiations at that time? I direct your attention to the 24th and the 25th of June, 1959. Looking at your chart, at that time?

[354] A. Yes.

Q. Do you recall stating in your affidavit, and I quote, "And this occurred after the first telegram had been delivered. I called Mr. Colella and told him that we were happy that the strike had been called off, and told him we would like to know what arrangements was referred to—"

Mr. Wayman: Excuse me. That's a misquote.

Q. (*By Mr. Fleischut*) "The agreement referred to in the telegram"—"and told him we felt the only agreement in existence was the agreement the company turn over to the union a list of those who had been replaced. I told Mr. Colella we had agreed to that and would do so. I was particularly concerned to have the agreement referred to in the telegram spelled out since it was my understanding that no

agreement had been reached on the 24th. Mr. Colella's confirmation of my understanding was made without reservation. I pointed out to Mr. Colella the employees would be coming back to work without a contract, and he agreed." Is that correct?

A. Yes; exactly.

Q. When you talk about employees coming back to work without an agreement you don't mean those who were replaced, do you?

A. No, I meant those employees who still had employee status.

Q. Do you recall a time in negotiations when Mr. Colella said the company was willing to go back to work, but to continue to discuss the remaining issues?

[355] *Trial Examiner*: You mean the union?

Mr. Fleischut: The union was willing to go back to work and discuss the remaining issues.

Q. (*By Mr. Fleischut*) I refer to June 5th. I am not referring to the affidavit at this time.

A. June 5th?

Q. Yes, sir.

A. The only notes I have on June 5th would be we discussed Section 11 and Section 2, and that no further proposals were made as far as being able to resolve the open issues at that time, so we recessed the meeting at noon.

Q. I believe you testified that at least on one occasion Mr. Colella proposed that the employees go back to work but the various remaining issues be submitted to arbitration or an impartial panel, is that correct?

A. On what date was that?

Gordon D. Ferrell—Cross.

- Q. I want you to call upon your general memory. I'm not referring to any particular date. Do you recall him stating that?
- A. I have to make a qualified answer.
- Q. Please do.
- A. There certainly were proposals by the union to resolve these issues through arbitration or through mediation. The only part that I'm not clear on is whether or not the employees were to return to work in the interim. This I can't recall [356] clearly, and I don't want to state one way or the other.
- Q. Now, you developed the course of negotiations concerning the five discharged employees?
- A. Yes.
- Q. And I believe that two of these were not criminally charged, is that correct? Please refer to your notes there.
- A. I have no indication who was criminally charged or otherwise. All I know is all five were discharged.
- Q. You remember, do you not, that not all of them were criminally charged?
- A. Well, let me think here. I really don't know because I did not partake in pressing any criminal charges.
- Q. Do you recall a time early in the negotiations when it was your position that discharged employees who were not criminally charged would be returned to work at the conclusion of the strike?
- A. Yes, we said any of the discharged employees who were not found by a Court of Law or by the NLRB would be reinstated, yes, that was our position.
- Q. That was not the question I asked you. The question was those who were not arrested, was it not the

Gordon D. Ferrell—Cross.

company's position early in negotiations that they would be returned to work at the end of the strike?

- A. I am trying to sort this out. Do you want to state the question again? It is not clear to me.

[357] (Last question read.)

The Witness: We said those who were not found guilty by a Court of Law, we were willing to reinstate them.

- Q. (By Mr. Fleischut) Those who were not found—
- A. Those who were not found guilty by a Court of Law, we would be willing to reinstate them. This was the position, as I recall.
- Q. Then at a later time did you not additionally insist that the employees be reinstated, according to the direction of the NLRB, as a condition to their employment?
- A. We were willing to abide by the disposition of the case by the NLRB, yes. I remember the four charges had been made in connection with the discharges, and we said we would abide by the decision of the NLRB, yes.
- Q. This was not an original requirement of your condition for reinstating these employees, was it?
- A. This was not an original requirement, that is correct.
- Q. When did it become a requirement?
- A. Only after the charges had been filed.
- Q. What date does your charge indicate that you made such a change?
- A. The earliest note that I have concerning the NLRB charges is on May 13th.

Gordon D. Ferrell—Cross.

Q. Are you aware that two of the NLRB charges were filed on April 16th and 17th, respectively?

[358] A. I am sure I was, because the company received copies of the charges.

Q. And it was not until approximately a month later that the NLRB clearance was made a requirement for their reinstatement, is that correct?

Mr. Wayman: That's objected to in the form in which it is put. I think the witness said he indicated that the company would be willing to abide by the disposition of the NLRB, sir.

Trial Examiner: Well, this is cross examination. He may answer. Overruled.

The Witness: Do you want to ask the question again?

Q. (*By Mr. Fleischut*) Wasn't it over a month after the charges were filed that you made NLRB clearance a condition for reinstatement of the two employees who filed charges with the NLRB respectively on April 16th and 17th?

A. That is approximately a month. It is not over a month.

Q. Now, directing your attention to the company's position throughout negotiations, on Sections 11 through 15 of the contract, they dealt with the same general subject, did they not?

A. Yes, sir.

Q. What is that subject?

A. The subject was the movement of employees through transfer, job bidding or reduction of force, layoff or recall from [359] layoff.

Q. Did the company not offer to let these contract sections stand as in the previous contract on March 31st?

A. In an effort to try and reach an agreement on that date, we certainly did.

Q. And the next negotiating session was held on April 8th, is that correct?

A. That is correct.

Q. And you were asked specifically by the union on that occasion if you were withdrawing that offer, is that correct?

A. I believe that is correct.

Q. And on the 14th you proposed some new sections of the contract touching upon Sections 11 through 15, is that correct?

A. That is correct.

Q. Although you did not at that time request changes in 11 through 15, as such, is that correct?

A. These proposals I think, as I stated before, on the 14th were in the nature of a supplement to these sections, which would give some of the relief which we were trying to get, yes.

Q. But that proposal did not incorporate changing 11 through 15 from the old contract, did it? Changing the wording of the sections?

A. As I recall that particular proposal, it incorporated some additional departments which would be included as frozen [360] departments, the same as departments 11 and 12 had been.

Q. Had departments 11 and 12 been frozen in the old contract?

A. No, I guess they had not. I am sorry.

- Q. Isn't it correct that the proposals of April 14th were in addition to, but by no way called for the rewording of Sections 11 through 15 in the old contract?
- A. Of course if you added to them it certainly would change them. I don't know how to answer that.
- Q. Did the proposal of that day call for physically changing the words in Sections 11 through 15?
- A. You are getting down to such a fine detail I would have to look at the proposal.
- Q. It was by way of a supplement, is that correct?
- A. It was by way of a supplement.
- Q. Now, when was the next time that the company raised a new proposal on Sections 11 through 15?
- A. The next proposal was made on May the 5th.
- Q. Did you submit written proposals on May 5th, with the alteration, Sections 11 through 15?
- A. Whether this was in writing or not, as to your question, I do not have that proposal here.
- Q. The proposal—
- A. I will say it was in writing.
- Q. And it called for wide-spread changes in those sections, did it not?
- [361] A. Yes.
- Q. A complete rewriting of them?
- A. Yes.
- Q. And that was on the day before you were going to commence to hire replacements, is that correct?
- A. No, I would say it was two days before.
- Q. You had written the letter of May 3rd asking everyone who wanted to return to work to come back on May 7th, didn't you?
- A. Prior to May 7th.

- Q. When were they to report? On May 7th?
- A. No later than May 7th, I believe it said.
- Q. And finally agreement was had on Sections 11 through 15 of the contract on June 4th, is that correct?
- A. All except 11, which was finally initialed on the 5th.
- Q. But 11 was originally agreed to on the 4th, wasn't it?
- A. To all intents and purposes it was settled.
- Q. Who reopened it and asked for a change on the following day?
- A. I assume that you are referring to the changes, the pencil changes on the proposal, which were initialed on the 5th.
- Q. Yes, sir.
- A. The company asked for these changes.
- Q. On May 23rd in negotiations, Mr. Ferrell, didn't you say [362] you didn't even know, yourselves, who had been replaced?
- A. As far as the negotiating committee, that is a true statement.
- Q. And on that same date, in a discussion of the impact upon the twenty-year plan, didn't you say that the people replaced would be the junior people who had been working as of March 31st; they then would be on lay-off?
- A. Would you mind reading that again?
- Q. Perhaps if I read a little longer statement you might recall. So that specifically the people who had been replaced—

Mr. Wayman: May I inquire whether you are reading from the affidavit?

Mr. Fleischut: No, sir. I am not.

Gordon D. Ferrell—Cross.

Q. (By Mr. Fleischut) "So that specifically the people who had been replaced would be under this situation, as of the movement, would be the junior people who had been working as of March 31st.—They then would be on lay-off—rather than take the position that people spotted all over the place seniority-wise would be replaced, and confuse us even more."

A. I don't recognize the statement. I don't know what it means.

Q. Do you deny that during a substantial portion of the negotiations it was your plan to put the replaced people on layoff rather than permanently replace them as the law permits?

[363] A. No, sir. It was never a plan to put them on lay-off. I think if you refer to our letter of May 3rd, we said initially these people would have their jobs only until they were replaced, and after that they would lose their status as employees.

Q. Did you the same day say the replacement had not been on an individual basis?

A. Yes, I did say that. This was in response to a question did we have an individual list of people we were replacing. We said no, we were not replacing individuals. We were replacing the junior people on the job who were needed, and the chips fell where they fell, and there was no list of individuals we were trying to replace, as had been inferred when I was asked the question.

Q. On May 28th was it not the company's position that people who returned to their own jobs would not receive super-seniority?

A. Would not receive super-seniority. It was not that they would not replace anybody.

- Q. You were not going to give them a flat number of years of extra seniority?
- A. I didn't say that.
- Q. Did somebody else for the company say it?
- A. I don't recall that anyone did, because our position was that they—that this twenty-year super-seniority would [364] apply to all those who came to work under the strike conditions, and that an employee who came to work and returned to his own job certainly was not a replacement, did not replace anybody. That's the best of my recollection on that.
- Q. Is it correct that throughout the negotiations you informed the union that no promises had been made to the replacements which were hired, other than that they were not to be laid off immediately at the end of the strike?
- A. I think we said this a little different way. We had given assurance that they would have a job, and they would not be laid off, yes.
- Q. Immediately at the end of the strike?
- A. As a result of the strike settlement—the settlement of the strike.
- Q. And you, of course, are acquainted with what was actually told the replacements, are you not?
- A. I personally never told any replacement anything.
- Q. But you are personally acquainted with what they were told, is that right?

Trial Examiner: How would he be personally acquainted with what someone personally told them? I think the witness has gone about as far as he can go in stating the company policy was thus and so. As far as he was concerned, I assume it was carried out.

Q. (By Mr. Fleischut) As far as you know, was company policy [365] carried out?

A. Yes.

Q. And that these people were merely assured they would have a job at the end of the strike, is that correct?

A. They would continue to have a job, would not be laid off or discharged or terminated or let go because of the settlement of the strike.

Q. And it was company policy they not be told any specific seniority plan, is that right?

A. We told them that we were negotiating, trying to arrive at a reasonable method of bringing this about.

Q. Bringing what about?

A. This job assurance. That we were not insisting on the twenty-year plan. We had to have something. I think I have testified we made three or four other alternate proposals as to how this might be accomplished. We did not know until the final settlement was reached as to what it was going to be. We stated on June 15th it would be the twenty-year we previously had put down in writing on May 28th unless we came up with something just as good or better that would be satisfactory.

Q. Now, isn't it correct that in your affidavit you said that replacement employees were never told of any such plan, that they were merely assured they would have a job at the end of the strike?

[366] A. As they were hired they were never told. That is a correct statement. Yes, sir.

Q. Is it now your position that sometime after they were hired they were informed of the super-seniority plan?

A. Certainly; we informed our employees at all times as to what was going on in negotiations.

Q. And you posted a notice on June 15th, did you not?

A. We did.

Q. And when you drew the plan up on May 27th, which was announced to the union on May 28th,—do you recall the plan I am referring to?

A. Yes, sir.

Q. That is in evidence as General Counsel's Exhibit 12.

A. I said yes.

Q. And were the employees informed of that plan on May 27th or May 28th?

A. The employees? No, sir. Some management employees were; but not the production, working employees, no.

Q. You made a special effort to keep that information confidential, is that correct?

A. Yes, sir. Yes. May I?

Q. Yes, you may.

A. You will note, in looking at this, it had "Policy Procedure". The first part of this was a uniform procedure for making replacements, so that we did it in a unified method so [367] that we did not get involved in discrimination, so that each of the product managers, foremen, would handle this thing in their own departments in the same way, and they were informed merely for the purposes of following a uniform procedure.

Q. The department heads?

A. Yes. Now, the application of any twenty-year seniority only came into play if there was a reduction in force, to prevent layoff. This never occurred until sometime in October. It was never used until then.

unless technically you say it was used on July 17th, because there were people on layoff who had seniority which was in excess of those who were hired during the strike, some of those who came back, if it were not for the twenty-year additive; and of course, the reason for it, to carry out our job assurance on these people who came to work, and it enabled us to continue our business during the strike.

Q. But you had said, had you not, that had Erie Resistor desired or determined to break the strike it could have replaced all of the striking employees? You have made such a statement?

A. Yes, sir. I certainly did make such a statement.

Q. And it was true at the time you said it?

A. Yes, it was. Again, we were concerned with saving our business, and not breaking the union.

[368] Q. And did you not state employees who applied for work and were hired, and were hired as replacements, were told they were hired—strike that. Employees who applied for work and were hired as replacements were told, as they were hired, that their jobs would not end as a result of the termination of the strike, but they were not told what type—

Mr. Wayman: Are you reading from the affidavit?

Mr. Fleischut: Yes.

Mr. Wayman: I'm sorry I interrupted you.

Q. (Mr. Fleischut) Is that correct?

A. Yes, that is correct.

Gordon D. Ferrell—Cross.

Q. Was it not company policy, when replacements were hired, that no forms of super-seniority were suggested to them?

A. That is correct.

Trial Examiner: He has said that two or three times.

Q. (*By Mr. Fleischut*) And this was company policy?

A. Yes, sir.

Q. Which employees would be adversely affected by the twenty-year seniority plan?

Mr. Wayman: That is objected to as calling for a conclusion that any one of us in the room can draw as well as Mr. Ferrell.

Trial Examiner: I think you had better make that a little bit more specific, even though it is on cross examination.

Q. (*By Mr. Fleischut*) Is it not correct, Mr. Ferrell, every [369] employee with less than twenty years would be adversely affected with the super-seniority plan, either in dollars and cents or in relative position for layoff, or both?

A. Yes. This is true, with certain exceptions, the exceptions being individuals who either because of a specific skill had a job in which someone with less seniority could not replace them and so they were secure in that skill, or where of course, someone in less seniority was a union officer or steward who had super-seniority and would not be affected.

Q. But is it not a fact that if an employee had, for example, twenty-one years of seniority, and he were competing for a job with an employee who had ten

Gordon D. Ferrell—Cross.

years of actual seniority and twenty years of super-seniority, that our first employee would be adversely affected?

Mr. Wayman: Under what circumstances?

Trial Examiner: See if the witness understands the question.

The Witness: I lost you on the turn there. The first one had twenty?

Q. (*By Mr. Fleischut*) Twenty-one years of seniority, and the second employee has ten years of actual seniority, plus "ten"-year super-seniority. They are both in the same job category.

A. Yes.

Q. For economic reasons you have to lay one of them off. [370] Which one is laid off?

A. These were the only two employees left?

Q. That's right. In this job category. And you are going to reduce it to one.

A. This is an extreme example.

Q. Yes.

Trial Examiner: Let's don't paint too black a picture. Just go ahead and answer the question. If it boiled down to ten men?

The Witness: The one with super-seniority would stay.

Q. (*By Mr. Fleischut*) Then employees with more than twenty years of actual seniority can be adversely affected by super-seniority, is that correct, in such a situation?

A. No, sir. That's a different question.

Q. I just gave you the same situation.

Mr. Wayman: I suggest you don't repeat that.

Trial Examiner: That's what you always get when you ask the extra question and try to wrap it up. It was my understanding the general picture, apart from specialists, the twenty years super-seniority would certainly favor the men who obtained it. Is there any argument about that? In the case of a layoff?

Mr. Wayman: There is no question about that in the case of a layoff. As it says, it did not apply to job bidding and these other things, but as to lay-off there is no question.

[371] Q. (*By Mr. Fleischut*) As to layoff, it would affect everyone, even those with more than twenty years of actual seniority?

A. If it came down to between those two people only.

Q. And in similar situations?

A. No, sir, because you could have an individual with twenty-one or twenty-two years of regular seniority whose job would not be affected by any of these people, because they could not bump them, they could not bid them, and it could only occur in the case of a layoff, and if these were the only two left, and this is no different than would occur with a union officer or steward.

Q. It could occur if there were three employees in the job category and another one had fifty years seniority? Would the same result occur?

A. If one had fifty?

Q. One has fifty years seniority and one had ten years of real seniority and "ten" years of super—and

Gordon D. Ferrell—Cross.

twenty years of super-seniority, and the man I am interested in has twenty-one years of actual seniority. Now, who is laid off?

A. The one with the most total seniority stays.

Q. And the one with the least total seniority goes?

A. Is out.

Q. Super-seniority being a factor?

A. Unless he is a steward or officer with super-super seniority, [372] and had twenty-one years, then the officer or steward would stay.

Q. The super-seniority policy has been the effective factor in layoffs and recalls since the strike?

A. It certainly has had an effect, yes.

Q. It has been the effective factor?

Mr. Wayman: This is objected to.

Mr. Fleischut: The efficient cause.

Trial Examiner: Let him finish his question.

Q. (*By Mr. Fleischut*) Isn't it correct super-seniority has been the efficient cause in layoffs and recalls and terminations since the strike?

Mr. Wayman: Layoffs or recalls generally is due to lack of work or additional work.

Mr. Fleischut: In the selection—

Trial Examiner: Are you withdrawing that question?

Mr. Fleischut: Yes.

Q. (*By Mr. Fleischut*) Is it correct that super-seniority has been the efficient cause in the selection of employees for layoff and recall since the strike?

Gordon D. Ferrell—Cross.

Mr. Wayman: That's the same.

Trial Examiner: Yes, that's the same question, as far as I see it. What do you mean by the efficient cause?

Mr. Fleischut: The moving factor.

Trial Examiner: Why don't you start over again? I don't [373] follow you on "efficient cause".

The Witness: I don't either.

- Q. (*By Mr. Fleischut*) Has super-seniority been taken into consideration in all the layoffs and recalls since the termination of the strike?
- A. If the individual being reduced had twenty years super-seniority it was taken into account in the event of layoff only.
- Q. And someone else without it would go instead, is that correct?
- A. This could happen.
- Q. Isn't that what did happen?
- A. In some cases, yes. In all cases, no.

Mr. Fleischut: No further questions.

Trial Examiner: Do you have any questions, Mr. Davidson?

Mr. Davidson: Yes, I do have some. I will try to avoid covering the same ground as Mr. Fleischut.

Trial Examiner: That will be very much appreciated.

Mr. Davidson: I thought it would.

- Q. (*By Mr. Davidson*) Mr. Ferrell, turning your attention to your summary of the wage issue which

Gordon D. Ferrell—Cross.

existed as of March 31st, the strike commenced, and I would appreciate a little clarification. You state that on May 6th the union proposed arbitration of the wage issue. Would you tell us in detail—a little more detail—what they proposed to arbitrate?

[374] A. On May 6th?

Q. That's right. Perhaps I can help you. Was the proposal for arbitration of wages to take effect as of the termination of the strike or was the proposal for arbitration in six months in the event the parties were unable to reach an agreement at the time of the reopener?

A. I think you will have to start back on this meeting with a package proposal in which the company offered a wage reopener, between November 1, 1959 and November 15, 1959, and if no agreement was reached with respect to wages the union may not strike nor will this wage issue be subject to arbitration and this agreement shall continue in full force and effect until midnight March 31, 1960. And then there were additional items in this package offer. In reply to the company's package offer Mr. Bordonaro stated that we had reached agreement on Section 8 as had been proposed by the company, that the union would ask the company to pay the full cost of insurance in lieu of a wage increase, and that they could not agree on freezing of new departments, or to submit these issues to arbitration for solution. That is the only reference to wages and arbitration that I have on that day.

Q. Is this from a written proposal?

A. No, no. This is a typewritten sheet from my handwritten copy. It is just easier to read.

Q. Those are your notes?

[375] A. Yes.

Q. With respect to the proposal made by the company under Section 48, that there would be two weeks vacation after three years of service, is it correct that this proposal would not have had impact on any employee employed at the time the strike commenced on March 31st?

A. Because of the large layoff list, that is a true statement.

Q. Mr. Ferrell, with respect to the issue of the reinstatement of the first two, and then four, and then five employees, do you recall at one time there was discussion between the union and yourself during negotiations as to what would happen if the charges, criminal charges against two of these persons, were dropped?

A. Yes. Do you have the specific meeting this occurred in?

Q. Yes. May 29th. Toward the end of the meeting.

A. You have a quote you would like to read to me?

Q. It depends upon the answer you give me.

A. I don't have it.

Q. I wonder if you would recall specifically a discussion between Mr. Colella and yourself close to the end of the meeting prior to a union caucus in which Mr. Colella said to you "Let us say a person withdraws his charges against one of our employees. Would you then reinstate these people? Then he will be rehired, so now we have those people against whom [376] there is no charges. This is something that has arisen out of the strike. Something if they are found guilty of criminal assault and they are fired."

Gordon D. Ferrell—Cross.

And you stated "They are already fired because of the assault." Colella said "If the assault charges were dropped they would be cleared and returned to work".

Trial Examiner: Are you attempting to quote his testimony from the stand?

Mr. Davidson: I am asking him if he recalls this.

Mr. Wayman: Is this a question?

Mr. Davidson: It will be. I have one more word to say, and the question will be asked. I am trying to refresh his recollection by giving him as much of the conversation—

Trial Examiner: Get that other word in and then we can start arguing.

The Witness: The—

Mr. Davidson. I think—the other word—to tie that word in I had better repeat the last phrase.

Trial Examiner: Just the last forty words.

Mr. Davidson: "If the assault charges were dropped they would then be cleared and returned to work". And you answered Mr. Colella, "Yes". Do you recall such an exchange?

The Witness: On which date is this?

Mr. Davidson: On May 29th.

Mr. Wayman: I think I'll have to object to that question.

[377] *Trial Examiner:* What are you reading from?

Gordon D. Ferrell—Cross.

Mr. Davidson: Reading from notes.

Trial Examiner: You're not attempting to quote Colella's testimony?

Mr. Davidson: No, I'm not attempting to put this in evidence, but I am just asking if he recalls.

Trial Examiner: I'll overrule the objection. Do you remember saying anything like that?

The Witness: On that date? Let me have that date again.

Mr. Davidson: May 29th. It was a Friday, I think.

Mr. Wayman: We are even letting Mr. Davidson testify to the day of the week now.

Mr. Davidson: That is a matter which the Trial Examiner can take notice of.

Mr. Wayman: Do you remember that question?

Trial Examiner: You can answer that just "yes" or "no".

The Witness: I know I can. I can remember a similar conversation.

Q. (*By Mr. Davidson*) Were you informed at a subsequent meeting the charges against these two employees had been dropped?

A. Do you have a specific meeting there that you are referring to, Mr. Davidson?

Q. I don't at the moment.

Mr. Wayman: This seems to be a matter of counsel saying he doesn't know and the witness saying he doesn't know.

Gordon D. Ferrell—Cross.

[378] *Mr. Davidson*: I thought there was a question pending.

The Witness: I asked you if you knew what particular meeting you were referring to.

Mr. Wayman: And you said no.

Q. (*By Mr. Davidson*) Do you recall at any of the subsequent meetings you were informed the charges against these employees had been dropped?

A. I recall I was informed the charges had been dropped against one of these employees. That's the only thing I recall.

Q. Do you remember which one?

A. Yes, sir.

Q. Will you tell us?

A. Mr. Karpinski.

Q. What was your position upon hearing the charges were dropped? Did you agree to his reinstatement at that time?

A. No, we did not. We did not.

Q. What was your position?

A. Our position was that he had been discharged until he was cleared by somebody, whether it be a Court, or what it be; the NLRB; or by some agency, or some procedure.—That we considered him discharged.

Q. And this was at some time subsequent to the first conversation that you recall having occurred with Mr. Colella, is that right?

A. Yes, sir.

[379] Q. Mr. Ferrell, do you recall on May 28th Mr. Coyne stating to you that the—the reinstatement—to this effect: Words to this effect: That if the question with respect to—if the super-seniority condi-

tion were dropped by the company in his opinion the rest of the settlement could be worked out; that this was the only issue keeping you apart?

A. On the 28th?

Q. Yes. Do you recall Mr. Coyne making such a statement?

A. No, I don't remember him making that statement. I have some other statements he made on that day.

Q. There were many made on all days, is that correct? Do you recall Mr. Colella making a similar statement during the side bar conferences on May 14th or May 15th?

A. I don't have any—

Q. Pardon?

A. I don't have any notes to that effect.

Q. Do you have any notes on the side bar conferences?

A. No.

Trial Examiner: Do you have any recollection of any such statement, apart from notes?

The Witness: The nearest that I can remember of any statement coming close to what Mr. Davidson said was Mr. Colella probably said if we could see our way clear to drop this twenty-year super-seniority that probably we could work something out on the other issues and reach an agreement. [380] That's as close as I can remember as to what he said.

Q. (By Mr. Davidson) Was that during the side bar conferences?

A. We had many discussions, Mr. Davidson.

Q. You can't place this?

A. I can't place this on that date, no, sir.

Gordon D. Ferrell—Cross.

Q. I would like you to take a look at General Counsel's Exhibit Number 12, if it is available there. The May 27th replacement policy, I believe. Do you have it before you?

A. Yes, sir.

Q. Do you recall when this was given to the union? Was this at the same time it was posted in the plant?

Trial Examiner: This wasn't posted in the plant, was it?

The Witness: On June 15th it was.

Trial Examiner: June 15th; but you are speaking of May 28th. Go ahead.

The Witness: Your question is was a copy of this given to the union on May 28th?

Q. (*By Mr. Davidson*) No. At the time it was posted—first I will ask it that way. Was it given to them on May 28th or any time prior to June 15th, when it was posted in the plant? Or was it, in fact, given to the union for the first time on June 26th?

A. This was explained to the union on May 28th. They were not given a copy of it—I am quite sure they were not given a [381] copy of it—until the 26th of June.

Q. I would like to ask you a question as to the operation of this policy. I would like you to assume employee "X", who has been permanently replaced in his job in the plant as of, let us say, June 15th—

A. "X" has been replaced?

Q. Has been permanently replaced. What seniority on June 15th would "X" have? Let's assume he had ten years prior service.

A. If he had been replaced he didn't have any.

Q. He had no seniority?

A. He had no status as an employee; no seniority and no nothing.

Q. Let's assume on June 18th Employee "X" crossed the picket line and reported for a job and was told he had been replaced. Employee "X" was suitable for available work and was rehired. What seniority would Employee "X" have as of the date of his rehire?

A. If he was rehired, accepted for rehire, reinstatement and rehire—just a minute.

Q. May I suggest that the answer is thirty years?

A. I would suggest that the answer is twenty years.

Q. Is it your testimony that returning strikers or—the returning strikers whose jobs had previously been filled by replacement, who returned prior to the termination of the [382] strike—that they were not credited with their prior service or seniority prior to the commencement of the strike?

A. Frankly, I don't know.

Q. Would Mr. Bertone be in a better position to answer that question?

A. Yes. I never did any of this personally, so I can't tell you.

Q. I want to direct your attention now, Mr. Ferrell; to a meeting of June 24th, and a discussion of the reinstatement of employees Karpinski and Skiba. Do you recall on that date—during the discussion of that issue—the question was raised by the union as to what would happen to Karpinski and Skiba if you agreed to take them back after a ninety-day layoff?

A. Yes, sir. I do.

Gordon D. Ferrell—Cross.

Q. Do you recall there were three alternatives discussed? Three possibilities?

A. As to what would occur to them after the thirty days?

Q. Yes.

A. That—

Q. Do you recall there was a discussion as to what would happen to them if they had been replaced? Do you recall what would happen if their jobs had been abolished? And as to what would happen to them if their jobs were open?

A. There was such a discussion.

[383] Q. Do you recall what you said?

A. It was determined there were no openings on the old jobs due to the reduced volume of business, and both Val Skiba and Karpinski would be moved—would go to their old job or be moved under Section 14 of the contract.

Q. Do you recall specifically there was discussion as to what would happen to them if it turned out they were replaced?

A. No, sir. I do not.

Q. Do you recall saying if they had been replaced that they would be considered for the next opening that came along that they were qualified to do? Saying, further—if this will help to refresh your recollection—if they had not been replaced and their job was still open they would go immediately; and if the job no longer existed they then would be considered for other openings as they came along? There were three different possibilities there. Does that refresh your recollection?

A. No, I only have the conclusion of all of this, which is they would go to their old job or be moved under Section 14 of the contract.

Q. You say you only have the conclusion. When you say that, that's all you have in your notes?

A. That's all I have in my notes.

Q. How about in your mind? I'm asking you to refresh your recollection.

A. I do not recall this other conversation.

[384] Q. Would Section 14 apply also if they had been replaced? Is that what you said at the time?

A. I don't recall any conversation about them being replaced.

Q. You didn't know at that time whether or not they had been replaced, did you?

A. Personally, no.

Q. And the union was inquiring as to what would happen to Skiba and Karpinski in the event you agreed to reinstate them after a disciplinary layoff, is that correct?

A. I said I don't recall this part of the conversation that you are quoting from.

Q. Do you recall there was such a discussion, apart from these specific words which I quote or which I ask you if you recall?

Mr. Wayman: I'm going to object to that because "discussion, apart from words", that is kind of meaningless.

Trial Examiner: It certainly is. I don't know how you expect this witness to recall specifically what was said with respect to these two employees in the course of fifty-two or fifty-three meetings.

Gordon D. Ferrell—Cross.

Mr. Davidson: I think he has demonstrated ability to recall some of the things, and I think it's fair to inquire of him.

Trial Examiner: Not the details such as you are going into. I know what you are pushing for. You had your own [385] witnesses on the stand to testify to these matters.

- Q. (*By Mr. Davidson*) With respect to Respondent's Exhibit 9, which was received in evidence, I believe you were asked the question as to who paid for this advertisement. Do you know of your own knowledge?
- A. I saw posted a list of names of those who had contributed to the payment of the ad.
- Q. Where did you see this list of names posted?
- A. It was posted over in one of the departments by the employees.
- Q. Posted on a company bulletin board?
- A. I don't recall where it was posted. I recall seeing the list.
- Q. What did the list say?
- A. I cannot tell you what it said.
- Q. Do you remember if there were any names of members of supervision on the list?
- A. There were a great many names.
- Q. Of members of supervision?
- A. Supervision, yes. I am sure.
- Q. And other people outside of the bargaining unit?
- A. Yes, sir. For the benefit—
- Q. You don't know who posted the list?
- A. No, I'm not even sure it was posted. I remember seeing it. Somebody showed it to me.

Gordon D. Ferrell—Re-Direct.

[386] Q. You don't know who initiated it?

A. No. I remember seeing the list of names. That's all.

Q. Did you contribute?

A. No, sir. I was busy in the negotiations.

Mr. Davidson: If I can have just a minute, I think I may be through. That's all.

Trial Examiner: Do you have any redirect?

Mr. Wayman: Very, very brief.

RE-DIRECT EXAMINATION

Q. (*By Mr. Wayman*) Were there any people who were working on production jobs in the plant during the strike whose names appeared on this list you have described in connection with Respondent's Exhibit 9?

A. Yes, sir.

Q. About how many names would you say were on that list, as nearly as you can recall?

A. It was a very long list. I would say maybe two hundred names.

* * * * *

Raymond Bertone—Direct.

[391] RAYMOND BERTONE a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner: Will you state your name for the record please?

The Witness: Raymond Bertone.

Trial Examiner: I didn't get your first name.

The Witness: Raymond.

Trial Examiner: Where do you live, Mr. Bertone?

The Witness: 1227 East 28th Street, Erie, Pennsylvania.

DIRECT EXAMINATION

- Q. (*By Mr. Wyman*) What is your job?
- A. Administrative specialist personnel department.
- Q. Who is your immediate superior?
- A. Mr. Gordon Ferrell, director of industrial relations.
- Q. How long have you held this job?
- A. Nine years in the personnel department.
- Q. Will you tell us briefly your duties in this position?
- A. Employment manager, hiring and processing new applications for the factor, taking care of personnel records, assisting foremen and operation managers on interpretation of the union [392] contract and any other duties assigned relevant to the personnel department.
- Q. Do you recall the strike in the spring of 1959?
- A. Yes, sir, I do.

Raymond Bertone—Direct.

Q. Will you tell us whether or not in the course of this strike the company attempted to hire people to work in the plants?

A. Yes, they did.

Q. Did you have anything to do with that?

A. Yes, sir, I did.

Q. Will you tell us how the company went about hiring these people?

A. After the letter of May 3rd when the company announced they were going to start hiring replacements, I was instructed by Mr. Ferrell to set up a procedure to start hiring replacements. At first, due to newspaper advertisements, and what I mean by advertisements, I mean exposure by the union and by newspaper reports that we were going to reopen the plant, many people began to call Erie Resistor inquiring about employment. These people were told to come to the Erie Resistor Corporation employment office. When they tried to come there—

Q. Where is that?

A. 644 West Twelfth Street.

Q. That is where the plant is located?

A. That's right, sir. Many of the people did not get in [393] because they were blocked by pickets so therefore—

Mr. Davidson: I object. I don't know this witness is able to testify to that.

Mr. Fleischut: Objection.

The Witness: The door to the personnel office is within ten feet of my office.

Trial Examiner: I will over rule the objection.

Raymond Bertone—Direct.

Q. (By Mr. Wayman) You could see this?

A. Yes, sir. Therefore we were forced to interview these people at another location, which was 412 G. Daniel Baldwin Building located here in Erie, Pennsylvania. Then when applicants began to call our office they were referred to this office for interview and possible employment. These applicants came to the office and were given our standard application form and interviewed by myself or by my associate Mr. Robert Sparks who at that time was supervisor of placement and training. In interviewing these people we were aware at all times we would not lower our standards in hiring these people. The females still had to be high school graduates. The men had to have some kind of former work experience or had some kind of back ground in working or had to be neat, personable and had to meet our qualifications for hiring. After we accepted the applicant, arrangements were then made to get them into the plant.

Q. Did you accept all of the people who applied?

[394] A. No, sir, I did not. The reason—

Q. Go ahead.

A. The reason is we did not lower our hiring standards.

Q. Now it has been testified that you had some three hundred applications for employment. Do you recall that?

A. Yes, sir, that is correct.

Q. You did not employ all three hundred of the people who applied?

A. No we did not.

Q. Did any of the people you did hire fail to show up for work?

Raymond Bertone—Direct.

- A. Yes, they did. For example, I would check with the operations manager the following morning to find out if the applicant arrived at the department assigned, and they would say no.
- Q. Did any of the people that you hired tell you why they did not apply or did not show up?
- A. Some told me directly and others told me indirectly. For example, parents would call—

Mr. Fleischut: Objection what other people said to him.

The Witness: What I mean by—

Trial Examiner: Wait a minute. When an objection is made don't try to answer the question. In view of his position I think he can state what, if any, reasons were given for an applicant not appearing for work. Over ruled.

- [295] *Mr. Fleischut:* Would it not be preferable to have the applicant testify?

Trial Examiner: I don't think so in this instance, no. All right, go ahead.

- Q. (*By Mr. Wayman*) Go ahead, Mr. Bertone.
- A. As I was about to say, when I talked directly to the applicant they either told me that their parents objected to them coming in, their friends objected to them coming in, and the applicant also told me "we tried to get in the plant and saw the pickets" and they were afraid and decided not to come in.
- Q. Now when you interviewed these people, what did you tell them about the tenure of their employment, if anything?

Raymond Bertone—Direct.

A. After receiving them as a permanent employee I told them they were accepted for employment and we then told them they would not be laid off or discharged due to the result of settlement of the strike.

Q. Are you familiar with the so-called twenty year policy you have heard about in the court room here?

A. Yes, I am.

Q. When did you first become aware of this policy?

A. May 27th, 1959.

Q. Did you follow the procedure that is outlined in that procedure and policy in placing employees?

A. Yes, sir, I did.

[396] Q. Will you tell us whether or not your duties include supervision of the keeping of records of lay off and recall of employees?

A. Yes, sir, it does.

Q. Did you at my request and for purposes of this hearing prepare a summary showing the numbers of employees in various categories working on production and maintenance jobs during the strike week by week?

A. Yes, sir, I did.

Mr. Wayman: Will the reporter please mark this document respondent's exhibit 11.

Trial Examiner: Respondent's 12 is the next one.

(Thereupon, a document was marked Respondent's exhibit 12, for identification.)

Q. (*By Mr. Wayman:*) Mr. Bertone, I show you a document which has been marked for identification, respondent's exhibit 12 and ask you what that is.

Raymond Bertone—Direct.

A. This is report of employees working on production and maintenance jobs during the strike beginning of the week of the first replacements.

Q. Is this a paper I asked you to make up for presentation at this hearing?

A. Yes, it is.

[397] Q. What was the source of your information for preparing that paper?

A. Our personnel records and payroll records.

Mr. Wayman: I offer respondent's exhibit 12.

Trial Examiner: Any objection?

Mr. Fleischut: One moment. None, sir.

Trial Examiner: Let me ask you this, Mr. Bertone. What period of time is covered by these reports?

The Witness: The dates are stated.

Mr. Wayman: Would the Trial Examiner like a copy to look at?

Trial Examiner: I just wanted to fix some time.

The Witness: The dates are May 4th all the way up to June 22nd, when the strike ended.

Trial Examiner: All right, the chart may be received in evidence, or the list, whatever you want to term it, may be received in evidence as respondent's exhibit number 12.

(The document heretofore marked Respondent's exhibit 12, for identification, was received in evidence.)

Raymond Bertone—Direct.

Q. (*By Mr. Wayman*) Mr. Bertone, also at my request did you prepare a chart or list showing the total hourly employees employed at the Erie Resistor Corporation in Erie during the weeks following the end of the strike?

A. Yes, sir, I did.

[398] *Mr. Wayman*: Will the reporter please mark this document respondent's exhibit 13?

(Thereupon, a document was marked Respondent's exhibit 13, for identification.)

Q. (*By Mr. Wayman*) Mr. Bertone, I show you a paper which has been marked for identification as respondent's exhibit 13 and ask you what that is.

A. This is a report, sir, requested by you to show the total employment of Erie Resistor Corporation on the week following the end of the strike.

Q. This is limited, I think, to hourly employees?

A. Hourly bargaining unit employees.

Q. And it shows bargaining unit and others?

A. Non-bargaining unit, yes.

Q. What was the source of this report?

A. Payroll records and personnel records.

Mr. Wayman: I offer respondent's exhibit 13.

Mr. Davidson: Subject to cross examination.

Trial Examiner: All right the report may be received in evidence and marked as respondent's exhibit number 13.

(The document heretofore marked respondent's exhibit 13, for identification, was received in evidence.)

Q. (By Mr. Wayman) Now referring to respondent's exhibit 12, I see a column on there marked "temporary replacement [399] new employee. Will you refer to the exhibit?

A. Yes, sir.

Q. You have that column?

A. Yes.

Q. Did you in fact hire temporary replacements during the period of the strike?

A. Yes, we did.

Q. Is it correct to say the first of these temporary replacements were hired sometime during the week of June 8th?

A. Correct.

Q. What became of these temporary replacements when the strike ended?

A. They were terminated within one week at the end of the strike.

Q. Did you also interview temporary replacements?

A. Yes, sir, I did.

Q. You and Mr. Sparks?

A. Mr. Sparks, both of us.

Q. What did you tell temporary replacements about the tenure of their employment?

A. We told them they would be working anywhere from five minute to the end of the strike. If the strike was to end immediately, they would be terminated immediately.

Q. Did you come to work every day during the strike?

A. Yes, except for days of April 2, 1959, and May 7, 1959 [400] and May 8, 1959.

Raymond Bertone—Direct.

Q. What happened on those days?

A. Those days there was mass picketing in front of our plants and I was unable to get in.

Mr. Davidson: I object. I think this issue Mr. Wayman is about to go into is not relevant to this proceeding.

Mr. Wayman: The courts have decided cases like this and have considered the existence of violence and mass picketing very relevant.

Mr. Davidson: I would be interested in hearing—

Trial Examiner: I agree picket line misconduct is a very important element if it is an issue in the case but is it an issue in this case?

Mr. Wayman: You mean the union may stipulate—

Trial Examiner: No, I don't see where there is any picket line misconduct, advance as a reason for not reinstating any of the strikers. There is certainly no defense raised on picket line misconduct in your answer.

Mr. Wayman: That is not the point at all. The point is when there is a picket line that misbehaves it becomes necessary to assure people these jobs will not be terminated after the end of the strike. This is a factor to be taken into consideration.

Trial Examiner: You may have that as a subjective reason for putting in superseniority, but how is picket line [401] misconduct an issue in this case, under the pleadings?

Raymond Bertone—Direct.

Mr. Wayman: I think it is necessary to prove it because they have alleged an improper motive on our part, and we have said our motive was not improper.

Trial Examiner: I don't think it is improper. It is illegal.

Mr. Wayman: Illegal? Excuse me.

Trial Examiner: Illegal as distinguished from any other motivation that you might have. I don't see where picket line misconduct is an issue in this case.

Mr. Wayman: I think the existence of an illegal picket line, the violence, the contempt of court, is important simply to show that this is a reason why the company did and had to grant job assurance and we will show why it had to be so-called super-seniority.

Trial Examiner: You haven't convinced me it is an issue in the case and even though it may have been one of your reasons for putting in superseniority—

Mr. Wayman: I believe we are entitled to put this in.

Trial Examiner: You think superseniority turns on the question of picket line misconduct?

Mr. Wayman: No, sir, but I think it is a factor to be considered by the Board and the courts and the Trial Examiner in looking at the motives of the employer and what it did.

Raymond Bertone—Direct.

[402] *Trial Examiner*: I don't think the issue is squarely presented by this witness here.

Mr. Wayman: Except that he experienced it.

Trial Examiner: I am going to let his answer stand as to why he didn't come in on these days but I still don't consider mass picketing, or picket line misconduct as an issue in the case. I will let this answer stand but by letting it stand it doesn't mean I am going to go into the issue of violence or misconduct on the picket line, as a reason for putting in your superseniority policy or plan.

Mr. Wayman: The next question I am going to ask is whether or not you had any complaints by workers, people who worked during the strike of damage to their property, injury or threats?

The Witness: Yes, sir, I did.

Mr. Davidson: Same object.

Trial Examiner: Well, now, the question is coming up squarely. I still say that under the pleadings that is not an issue in this case. By that I mean you cannot get into this record but I will permit you to make an offer of proof of everything you expect to prove by way of misconduct but as far as taking testimony, I can't see where it comes within the issues of this case.

Mr. Wayman: It depends on what the issue of the case is, of course. If the issue is simply superseniority per se [403] is not violative of the Act, then most of what we have talked about here is irrelevant because certainly it is a fact that the

Raymond Bertone—Direct.

company did install superseniority policy prior to the end of the strike, and have continued it since. I don't think there is any dispute about that in the record. That appears not to be the only issue raised by the general counsel in his complaint. He seems to have it in the alternative that even if it is all right to have such a policy your motive is bad; you didn't need it and the fact we did have this dreadful situation—

Trial Examiner: I don't think that is his theory.

Mr. Wayman: I think it is his theory.

Trial Examiner: Is that your theory?

Mr. Fleischut: I prefer to state my own theory, if I may.

Trial Examiner: Well, state it.

Mr. Fleischut: There are two paragraphs in the complaint dealing with superseniority as a two-theory set out. There are two paragraphs that deal with it. Now the first is the per se matter which I am specifically referring to, and the Board's first case on this matter, Potlatch Forest and later cases in this matter the Board found superseniority discriminatory under the facts of the cases presented so that both of these theories are presented at this time.

Mr. Murphy: May I ask a question?

[404] *Trial Examiner:* Yes.

Raymond Bertone—Direct.

Mr. Murphy: It is not true in the later cases the Board went into the motive of the employer in granting superseniority?

Mr. Fleischut: Well, of course, discrimination deals heavily in the area of motive, it most certainly does.

Mr. Murphy: And the circuit courts have held that motive is the controlling factor.

Mr. Wayman: Some—

Mr. Davidson: I think there is another consideration in this case which makes this wholly irrelevant, and that is this. We have testimony now from union witnesses and company witnesses that the assurances given to these employees was in effect they were permanent replacements. Now as far as I know under Mackay Radio you can give this assurance without there being violence or anything else. The question here is after having given this assurance for which they would like to introduce this evidence for support for having done it, they then went ahead and instituted the twenty year superseniority plan and made that or its equivalent a condition of the settlement of the strike, and I think from the point of the assurance on for which they don't need any of this evidence, it then becomes irrelevant.

Mr. Wayman: I would say it would become irrelevant if the general counsel and the union's counsel were to [405] stipulate we couldn't get people until and unless we gave them this job assurance.

Raymond Bertone—Direct.

Trial Examiner: I think that has been your testimony all along.

Mr. Wayman: Yes, but I understand the general counsel says that is not so. He hasn't proven it, I will grant you, but he says it isn't so.

Trial Examiner: We spent three days taking testimony on the bargaining sessions.

Mr. Wayman: That's true.

Trial Examiner: The uniform testimony, as I understand it, was the company had to have seniority to get replacements.

Mr. Wayman: If that is established I can depart from this except there is one other point, and maybe the general counsel will concede this also, and that is they want to know why—they say you changed your position on some of these things in the course of bargaining. Assume we did, and Mr. Ferrell was very frank about what we did in bargaining. Now the events of May 7th and May 8th contributed in a substantial part to our change in position on such things as union shop. This is a complete story.

Trial Examiner: Now we have had much testimony on the bargaining sessions and the positions of the parties and now it strikes me that you want to show as a reason, maybe a subjective reason for insisting upon superseniority but [406] the fact that some of the replacements were experiencing difficulty in going through the picket line or various other forms of misconduct. I don't see where that plays any part because you have already stated your

Raymond Bertone—Direct.

position to the union why you didn't these replacements and in an economic strike unquestionably you have a right to replace the strikers.

Mr. Murphy: I would like to point this out, if that is the context of the case, there is no dispute that we had to grant superseniority to get replacements.

Mr. Davidson: That isn't what I said.

Mr. Murphy: Let me finish. Then there is no need for this testimony. However, this is not, as I understand it, the general counsel's position. For example, the general counsel offered exhibits in this case which were admitted as to the labor surplus in Erie. I have forgotten the numbers now but there was a series of them, reports of the Department of Labor. I understood the general counsel's position to be the relevancy of those exhibits was there were so many unemployed people in Erie we could have easily gotten replacements without any form of job assurance or superseniority.

Now it is therefore necessary for us to prove that regardless of the number of people unemployed in this town, these people or many, many of these people would not come to work at Erie Resistor, subject themselves to this kind of violence for a temporary job and that they had to be granted some sort [407] of guarantee of superseniority, a tenure, you might say, to sustain the violence which they are subjected to. Now if it is not the general counsel's purpose for offering these exhibits as to the labor surplus area, I think we should know it.

Raymond Bertone—Direct.

Mr. Wayman: I think the exhibits should then be withdrawn.

Mr. Murphy: I think the general counsel will frankly admit this is the purpose of those exhibits. Is that not so?

Trial Examiner: Mr. Davidson, go ahead.

Mr. Davidson: I trust the statements made by Mr. Murphy as to our position and what the evidence will show is not to be taken as evidence. We have not stated it was necessary to grant superseniority and the record does not show that the company assured people of superseniority. I think that is the thing which is clear in this case. Every witness has said—

Mr. Wayman: Well, let's not talk about—

Trial Examiner: No, don't interrupt.

Mr. Davidson: I am arguing on the evidence in the record.

Mr. Murphy: And there will be more.

Mr. Davidson: The evidence is applicants were assured they would not be terminated as a result of a settlement of the strike. I think that has been what Mr. Bertone has said, in effect, and I think that is what Mr. Ferrell said, [408] in almost those words, but that is not, as I know it, an assurance there would be superseniority for these employees at the end of the strike. I think these are two very different things, and I think that insofar as an assurance to employees that they would not be terminated as a result of the settlement of the strike was

Raymond Bertone—Direct.

concerned, this is an assurance, as far as I know, which is given to permanent replacements merely by virtue of calling them permanent. It is nothing more than that. We don't have to go into this evidence to show that assurance could have been given. The question what the company did after they gave that assurance. This is the question in this case.

Trial Examiner: You want to say anything, Mr. Fleischut?

Mr. Fleischut: Frankly, sir, I feel a bit out-classed at this point and I think I will stand on the pleadings and on the evidence. It seems like someone setting up a trap here for me to step into, walk into some kind of a demurrer. I have stated the theory of my case in my pleadings and my evidence and what I intended to put in and what the evidence proves I prefer to argue in a brief or at the close of the hearing. I don't want to rehash my whole theory for fear a slow-witted person like myself will walk into one of these traps laid about what I said or what I didn't say. I want the witness' testimony to speak as to what was said and then argue the legal results of that later on. I think my [409] position is amply clear, and it is not—I am trying to be evasive but we are playing with words here.

Trial Examiner: I don't know about that. I think that is in line with most representatives of the general counsel. They refuse to be pinned down on any theory. Everything is an issue in the case and no specific theory. I have had that time and time again:

Mr. Fleischut: No, sir.

Raymond Bertone—Direct.

Trial Examiner: They say we rely on the complaint, and the complaint tells you little of anything, to be frank with you, in my opinion. What is your position with respect to this question now of picket line misconduct and also your Department of Labor exhibits which went in as general counsel's exhibits 38, 39, 40, 41?

Mr. Fleischut: I don't mean to be evasive but there are four principal cases cited by the Board in this area. This is not an original idea. There has been these four cases. As to the exhibits the purpose of them is to show it is a labor surplus area, that people were available to come to work. I don't know how I go beyond it—tell me once again exactly what you want me to comment on, sir, and I will try to address myself to it. I said at the time I put the exhibits in it was for that purpose, and I am not shifting now.

Trial Examiner: I received the exhibits in evidence. [410] I don't know what significance they had but I received them in evidence. I am still not convinced that picket line misconduct is an issue in this case. I don't recall any testimony that during the bargain negotiations any of the company representatives ever advanced as a reason for superseniority that it was necessary because of the conduct of the pickets.

Mr. Wayman: Well, the difficulty with that—two difficulties with that problem, first, the general counsel has alleged a lot of things. I think he defined them as minuscule at some point or another. Maybe that is not in the hearing. Allegations we refused to

Raymond Bertone—Direct.

bargain by changing our position on issues, by meeting only with the mediator, and—

Mr. Fleischut: There is no testimony on that point.

Mr. Wayman: These are the charges, while they may not be the general counsel's real position, nevertheless we feel we must meet them. Mr. Ferrell when he was on the stand yesterday talking about the position the company took on union shop and check off and some of these other union security provisions said the company's position changed I believe after May 11th—the real bad picketing took place on May 7th and May 8th. We must keep in mind the sequence of events. The company notified the public generally and sent a letter to the employees on May 3rd saying [411] "We are going to begin to replace people."

Trial Examiner: Was that reason ever advanced to the union representatives during the negotiations?

Mr. Wayman: As a need for superseniority?

Trial Examiner: That's right.

Mr. Wayman: I would have to ask my witness that question. Excuse me, sir.

Trial Examiner: All right.

Mr. Wayman: As usual, we will have to check all of these notes.

Trial Examiner: I mean it strikes me that is a pretty outstanding incident, in my opinion. I could very well see how you over look other matters in the

Raymond Bertone—Direct.

court of fifty-four meetings but it strikes me that if picket line violence at one or two of these meetings and you say it is limited to two days or three days—

Mr. Wayman: No, no.

Mr. Murphy: Oh, no, no.

Mr. Wayman: I mentioned the two or three days because of the significance of the time table here. The picketing was bad from the beginning, the beginning of April 2nd—you remember Mr. Bertone said he couldn't get in on April 2nd, the day after the strike.

Trial Examiner: That sort of sneaked in there. He couldn't get in. Why couldn't you get in? Maybe there [412] had been a snow storm.

Mr. Wayman: No, no, they said because of the pickets. Now an injunction was sought in that week and obtained by the company from the Common Pleas Court. The union violated the injunction and we have certified copies of the court records here and the transcript and they continued to violate the injunction. On May 3rd the company put out its letter saying "We are going to hire replacements," and then the picketing becomes horrendous, that is on May 6th, 7th and 8th.

Trial Examiner: Let me interrupt a moment? What do you want to prove by this? What is the purpose of showing picket line misconduct?

Mr. Wayman: I want to improve the employer reasonably believed that for this reason, among others, it was necessary to give these people some

Raymond Bertone—Direct.

assurance that could be practicably put into effect that they would not be laid off or discharged or otherwise thrown out of their jobs at the end of the strike.

Trial Examiner: You mean picket line misconduct or violence was one of the reasons why you wanted superseniority?

Mr. Wayman: That was one of the reasons.

Trial Examiner: Is there any real objection to that? Maybe we are fighting over nothing.

Mr. Wayman: Motive is always subjective.

Trial Examiner: It is a little more than subjective in this case because there is no evidence that reason was ever [413] given to the union for superseniority.

Mr. Wayman: I don't know that it was.

Trial Examiner: I haven't heard a line from any of the witness and I have heard them testify to everything that was considered material.

Mr. Murphy: There is one further point that harks back to these exhibits. The company had to do this to get employees, to get replacements to withstand this violence in order to come in to work. That is a fact and that's what we would like to prove that we did not have, in effect, a surplus labor market willing to come to work at Erie Resistor.

Trial Examiner: I don't know if I can litigate that. I think going along with what Mr. Wayman says it was necessary to give the seniority, the

Raymond Bertone—Direct.

superseniority, because of picket line violence. Now that was one of the reasons, one of the factors and one of the considerations. Is there any objection to that?

Mr. Davidson: Yes, I do have.

Trial Examiner: Maybe we have a rifle on a mole or something.

Mr. Davidson: I don't want to litigate violence when it has nothing to do with the issue. In the first place I am starting to use the word myself but I think what we are talking about is merely mass picketing on three days.

Mr. Murphy: There is more than that.

[414] *Trial Examiner:* You see I walked into that two when I limited it to two days.

Mr. Davidson: I think we keep having two very different things confused. One is the assurance given to the strikers and the other is what the company did—to its workers. I think the only possible basis for introducing this and I don't concede it is relevant but I think the only possible basis would be to justify the assurance given to the people who came in as permanent replacements and I don't think it is even necessary to give a justification for calling people in as permanent replacements and assuring them exactly—in other words, exactly what you can assure the replacements.

Trial Examiner: I tell you the way I look at it and the only fair way of looking at it, without attempting to get into some perhaps long litigation

Raymond Bertone—Direct.

over this question of misconduct, I would take testimony to the effect, as I have stated, if this is one of the reasons the company instituted superseniority because of misconduct, I would take general testimony along that line.

Mr. Wayman: That's what I would propose to offer.

Trial Examiner: As far as coming in on individual acts, did so and so yell at somebody, and did they yell back, I don't intend to go into that.

Mr. Wayman: I think we might be here forever if we started to do that but it is important because, as I say, our [415] motive has been challenged, our reason for doing this. We want to show everything we can that will back up our motive in giving superseniority and in giving job assurance; that is the thing that really entered into our consideration.

Trial Examiner: I will take testimony along that line, and, plus, if you want to recall Mr. Ferrell as to whether or not this reason was ever advanced as one of the reasons for instituting or adopting superseniority in the course of the negotiations.

Mr. Wayman: Perhaps we can do this, Mr. Ferrell was asked a question that led to the introduction of general counsel's exhibits — something about three hundred applications and ten thousand unemployed that the general counsel seemed to feel important, and we might after we are through with Mr. Bertone recall Mr. Ferrell and ask him about that. It might be of some assistance.

Raymond Bertone—Direct.

Mr. Fleischut: Sir, I would like to raise this point. Perhaps it would be possible for us to have some clearly defined lines as to how far we go on this. I know from experience this is a Pandora box and when you open it there are going to be individuals referred to and there will have to be long rebuttals and so forth. Perhaps there is an area that we could stipulate as to mass picketing on certain days or certain instances and then the company could take it from there, and state just what the reason and so forth. Once we [416] open the door to "what did you see this day and what did you see that day, and what happened this day and what did the officers say," we are into it, aren't we?

Trial Examiner: No, I don't intend to go into that. I will be perfectly frank with you on that.

Mr. Wayman: Of course, I might say this in answer to Mr. Davidson's proposition, he hasn't heard our case yet. We still have to put in the evidence by the people who did these things rather than by hearsay, as to what people were told and when they were told. Now I refer to the case *Wilson and Company, v. NLRB* 120 Fed. 913, an early case, in 1941, in which the fact there was violence and mass picketing, misbehavior was considered of substantial importance in determining an issue like this one.

Trial Examiner: In the cases I have had it has always been interposed as a reason for not employing the striking employees, and that issue was disposed of by the NLRB when it refused to issue a complaint on the employees who were discharged. We are not going into that.

Raymond Bertone—Direct.

Mr. Davidson: I would like to know what the issue was in Wilson that was similar to this.

Mr. Wayman: Let me read very briefly what the court said, and, of course, this is just a brief excerpt.

Trial Examiner: This is an old case, not that I know it off hand.

[417] *Mr. Davidson:* May we go off the record for this?

Mr. Wayman: I don't think we should be off the record.

Trial Examiner: No.

Mr. Wayman: "It is also claimed the petitioner abandoned its long standing seniority policy. This is plausibly explained by the fact the petitioner had hired new employees in number sufficient to operate the plant. He was not obligated to replace them and under such circumstances his previous seniority practice could not be followed."

We are going to demonstrate that. If our motive was not challenged—just to say superseniority per se is bad, that is one thing but our motive is challenged and we want to prove we had a proper motive.

Trial Examiner: I think that would be in line with what I have stated.

Mr. Wayman: I think so too.

Trial Examiner: If that is one of the reasons why you put it in, all right, but I am not going to

Raymond Bertone—Direct.

require that you have forty or fifty witnesses to support your reason.

Mr. Wayman: Oh, dear, no, no. I think one or two witnesses will be plenty. I am not going into it to any extent with Mr. Bertone other than what I have said right now. The difficulty, of course, if you present the thing in an orderly way and put the witness on the stand you don't like to haul him off and say "I will call you back and talk about [418] violence sometime later."

Trial Examiner: Where were we?

Mr. Wayman: I think he had answered the question I asked him and I was about to proceed to a new subject.

Trial Examiner: All right, go ahead.

Q. (By Mr. Wayman) Mr. Bertone, do you recall a meeting on June 26th with a union representative?

A. Yes, sir, I do.

Q. What happened at that meeting, tell me in your own words as nearly as you can recall?

A. Mr. Ferrell, my superior, instructed me that union representatives were coming in to see us that morning to get a list of the people who had been replaced during the strike. Mr. Colella, Mr. Bordonaro, and to the best of my recollection I remember those two and I believe a Mr. McCue was with them, and the sole purpose was to get this list of replacements, or replacees.

Q. Did you have such a list?

A. Yes, sir, I did. No, I am sorry, not in the morning. I did not have the list ready for them in the morning. I told them I would probably have it for them that afternoon because I had to do more checking.

Raymond Bertone—Direct.

Q. Did you obtain such a list in the afternoon?

A. Yes, sir, I did.

Q. What did you do with it?

[419] A. I turned it over to the gentlemen I just mentioned.

Q. Did you discuss this list to any extent?

A. No, not to any extent.

Q. I would like you to look at general counsel's exhibit 29, please. Do you see general counsel's exhibit 29?

A. Yes, I do.

Q. Is that the list to which you make reference?

A. Yes.

Q. Will you tell us how you went about making up that list?

A. Upon receiving instructions to give the union a replacement list, I then went to all operation managers, the manager of the electronics division and the foremen of the pastics division who have been keeping a running record of their replacements, to get the information to give to the union.

Q. That was the source of your information?

A. That was the source of my information, yes, sir.

Q. Did you subsequently give the union another list?

A. Yes, sir, I did.

Q. Would you look at general counsel's exhibit 30, please. You have general counsel's exhibit 30?

A. Yes, sir, I do.

Q. Is that the list you gave the union on July 6th?

A. Yes, sir.

Q. And yesterday I believe you were in the court room [420] were you not, Mr. Bertone?

A. Yes, sir, I was.

Raymond Bertone—Direct.

Q: Were you present when we entered into a stipulation regarding three people?

A. Yes, sir, I was.

Q. One of them was a gentleman named High L. Nelson. Do you remember that?

A. Yes.

Q. Do you know Mr. Nelson?

A. Through bowling with him in the bowling league.

Q. He replaced a Mr. Rolland Myers?

A. He replaced him on job 529, yes.

Q. The paper you have says 530. How do you explain that?

A. Job 530 is a classification, classified as set up "B" grade. This is a long standing classification with the company which was used as a sort of training classification to job 529 set up "A" grade. The procedure was in former contracts and former procedure that the man in order to be a 529 had to be on set up "B" grade at least one year in this classification. When we started hiring our replacements, Mr. Nelson being brought in as a new employee had to be trained in our way of doing things, knowing our machinery and procedure, our production methods, and not knowing this we then put him on job 530. When he became sufficiently trained on 530 he would automatically have been upgraded to 529.

Q. Did anybody else go in 529 in place of Mr. Myers?

[421] A. No, sir.

Q. What is the nature of the work on jobs 530 and 529 with relation to each other?

A. They are, sir, helping to keep the assembly line going which most of our operations consist of assembling of electronic components. The set up man is

Raymond Bertone—Direct.

supposed to see the material is there, to make adjustments on machinery, to help the assemblers on the line, procure any kind of material or whatever they need to keep production going.

Q. Is there any substantial difference in the kind of work done on job 530 from the kind of work done on 529?

A. Not too much, sir; not too much in detail. The only difference is the 529 man will have a higher degree of responsibility than the 530 man.

Q. I am going to ask you whether or not these lists you have identified again represent the application of this written policy of May 27th which I believe is general counsel's exhibit 12? Will you look at general counsel's exhibit 12 please?

A. Yes, sir.

Q. You have general counsel's exhibit 12?

A. Yes.

Q. Do you remember my question?

A. No, sir. Would you rephrase it please?

Q. Whether or not the replacements shown on this list represent [422] the application of the policy you are now examining?

A. Yes, sir, it does.

Mr. Wayman: I have no more questions on direct.

Mr. Davidson: It it is all right, I will cross examine him first.

Trial Examiner: What did you say, Mr. Davidson?

Mr. Davidson: If it is all right I will cross examine first because I am ready.

Trial Examiner: All right, it doesn't make any difference.

CROSS EXAMINATION

- Q. (By Mr. Davidson) Mr. Bertone, you stated employees were told to come to the employment office at the plant and many people couldn't get in. Is this on the basis of your observation through the window of the plant?
- A. Yes, and phone calls, when people called back and said "I tried to get into your employment office but I couldn't."
- Q. On what dates did this occur?
- A. This occurred after May 11th.
- Q. When did you move the employment office to the other location?
- A. In fact I would say the week of May 11th and following.
- Q. That was the earliest?
- A. Yes, and I will tell you why, if I may.
- Q. I am not interested in why.
- A. All right, if you don't want it.
- [423] Q. Now what qualifications did you seek of male employees. You mentioned neat, personable and previous work experience and I think you said other qualifications.
- A. Well, such as attitude.
- Q. What else?
- A. Any other normal qualifications.
- Q. General type qualifications?
- A. Yes. Stature, build—I mean physical.
- Q. What kind of experience?
- A. Well, what I mean by experience—

Raymond Bertone—Cross.

Mr. Wayman: Experience?

Mr. Davidson: Experience.

The Witness: Well, in some—

Q. (*By Mr. Davidson*) Specific or just that they had worked somewhere else before?

A. In some jobs it would be specific experience and other general jobs would be if they worked before.

Q. Under what circumstances did you talk to applicants if they failed to show up for work? Did they call you?

A. Yes, sir, they did. Some of them said they didn't want to work in a struck plant.

Q. Some said they didn't want to work in a struck plant?

A. Yes, sir.

Q. Of the three hundred, how many did you accept?

A. I didn't accept any of the three hundred.

[424] Q. Of the three hundred applications?

A. That's right. This is what we had left when the strike was over. I had three hundred more applicants.

Q. Did you turn all of those applicants down or were these applicants you hadn't got to?

A. No, the thing is I hadn't gotten to them yet.

Q. These applications came in during the course of the strike, is that right?

A. That is correct, sir.

Q. When did they start coming in?

A. When they started coming in?

Q. Yes, that's right.

A. Whom are you referring to?

Q. The applications.

A. The applications?

Q. That's right.

A. I would say within one or two weeks.

Q. One or two weeks after what?

A. After the strike started.

Q. These came in by mail?

A. Some by mail, some by request from people at the plant that had relatives who were interested in coming to work.

Q. These people filled out a written application and you retained it in the file?

A. That is correct.

[425] Q. Until you were ready to interview them, is that correct?

A. That is right, which is our normal procedure.

Q. And some of these people then, at the end of the strike you had a reservoir of applications from people?

A. That's correct.

Q. Were these people you had interviewed already?

A. No. Some I did and some I didn't because they were coming in so rapidly.

Q. I would like you to take a look at respondent's exhibit 12 and 13 which were introduced and described by you. Do you have them before you?

A. Yes.

Q. First looking at exhibit 12, the column "week ending" I notice that the last column is 6/22/59.

A. Yes, sir.

Q. Does this omit the week during which the strike ended? Should that be the week beginning 6/22?

A. That should be the week beginning 6/22.

Raymond Bertone—Cross.

Q. That whole column is erroneously titled, is that correct?

Mr. Murphy: It might help Mr. Bertone if you would give him a calendar.

The Witness: Mr. Davidson, what this means, this is what our employment was, the proposition at the end of the week of the 22nd.

Q. (*By Mr. Davidson*) The end of the week?

[426] A. Yes, these are all beginning the week.

Q. So that would actually indicate employment as of June 27th?

A. That is correct, if you want one more week. In other words, it would be more accurate to answer your question to just advance it one week. When I made this up I just went that week.

Q. The week consists of five days?

A. Yes.

Q. The next column says "clerical and other employees." I notice a constant figure. Were these people working on production and maintenance work during this period?

A. Which figure are you referring to?

Q. The second column, 140, clerical and other.

A. No, they were not working constantly. They worked sometime in the factory and other times they worked on their clerical duties.

Q. More in the factory at the beginning of the strike than at the end, is that right?

A. That's right.

Q. They were not considered permanent replacements, is that right?

A. No, sir.

Raymond Bertone—Cross.

Q. The next column "permanent replacement new employee." This means employees, who had no prior service with the company prior to the union's strike?

[427] A. That is correct.

Q. Let me go back to the "clerical and other" column for a minute. At the end of the strike did all 140 go back to their original jobs, or let me put it another way, did any of them remain in the bargaining unit?

A. No. How could they remain in the bargaining unit if they weren't in the bargaining unit in the first place, so they all went back to their clerical jobs.

Q. They were given no opportunity, some of those who were on production and maintenance jobs, to stay on them?

A. No, sir, not to my recollection.

Q. Let's look at the next column, "temporary replacement new employee." These are the people whom you stated were terminated within—well, when were they terminated?

A. Within one week, approximately July 4, 1959.

Q. Approximately July 4th?

A. Yes, for all purposes that was their last date.

Q. What happened when they were terminated? What happened to the jobs they were doing?

A. Then the—

Q. Were there calls, recalls from among the strikers to fill the jobs the temporary employees had been performing?

A. Yes.

Q. These were among the strikers who had remained on strike until the very end of the strike, is that correct?

Raymond Bertone—Cross.

[428] A. That's right, and were not replaced on their jobs.

Q. Now the next column entitled "laid off employee permanent replacement.". These are people who were on the seniority list as of March 31st who were out of the plant on lay off, is that correct?

A. That is correct.

Q. Now, I take it well, let's go on. "Returning strikers" now is the next column. This includes all persons who were in the bargaining unit and at work on March 31st?

A. That is correct.

Q. Who came back to work prior to the end of the strike, whether it was the beginning or towards the end but sometime prior to what date?

A. June 25th.

Q. Now were some of these returning strikers also considered as permanent replacements?

A. Yes, sir, they were.

Q. Can you describe to us how that happened?

A. Yes, sir, if a man was replaced on his job by either laid off employee or new hire and then came in himself to recover his own job and found he was replaced, he was then asked to fill out a statement of qualifications and availability and we then assigned him to any job opening we had that he was qualified for.

Q. And he was then a replacement?

[429] A. He then became a replacement for somebody else, if the job was in existence as of March 31st. If this was a new job that had been opened up, then the man did not become a replacement.

Q. And in either case he got superseniority?

A. That is correct.

Q. I take it there were some instances in which some of these employees had been replaced themselves towards the beginning of the strike, employees came in towards the end of the strike and then they considered themselves as permanent replacements, is that correct?

A. I don't follow that. You lost me with all of those replacements.

Q. I take it that some—an employee, a returning striker could have been, and when I say could have been—such cases did happen—could have been replaced the early part of May, let's say, and then he came in the middle of June, let's say, he then became a permanent replacement on another job besides the one previously held?

A. That's right.

Q. Then such replacements happened, is that right? Can you tell us about how many of these there were?

A. I would have to look through the record to check that for you, sir, because I can't tell you.

Q. Employees who were replaced with superseniority—I take [430] it there were replaced employees on the list of one hundred twenty-nine, is that correct?

A. That is correct.

Q. Were there about twenty-five more?

A. I would have to look at the record. I can't give you any accurate idea.

Q. From your recollection, it was a substantial number—more than one or two?

A. Yes, I would say more than one or two.

Q. These employees now and let me say what I mean by these employees, those strikers who were replaced then came back at a subsequent date and replaced someone else?

A. Yes.

Q. And carried the seniority date as the date of their original hire, is that correct?

A. That's correct.

Q. The date previous to the strike?

A. That's correct.

Q. And they are given twenty years superseniority, in addition?

A. In case of lay off, right.

Q. In addition to their original date of hire?

A. That is correct.

Q. I would like you to take a look at respondent's exhibit 13. This shows the number in the bargaining unit, and [431] again let me ask you, when this says week of June 29th, does this mean beginning the week of June 29th?

A. Yes, sir.

Q. You have the calendar. Is that a Monday?

A. Yes, Monday, June 29th.

Q. This would be the week following then the last week shown on respondent's exhibit 12, is that correct?

A. Yes.

Q. And again this would be the number as of the end of that week, rather than as the date shown, is that correct?

A. Yes, sir, that's right. Again, Mr. Davidson, I will have to say to you, you will have to advance this five days.

Raymond Bertone—Cross.

Q. Five days?

A. That's right, sir.

Q. In terms of superseniority, or the twenty years additional seniority, the only number on this exhibit which is material is the number in the last column on the bargaining, is that correct?

A. That's correct.

Q. The non-bargaining people in various excluded categories, excluded under the terms of the certification?

A. That is right.

Q. Now I note in looking down the column of figures that in the period of June 29th, let's say, through July 27th, there was an increase in the total number of bargaining unit [432] employees from three hundred fifty-eight to three hundred sixty-two, that's a change of, if my arithmetic is correct, of four employees in the total number. I take it from your previous testimony with respect to the temporary employees that the identities of the employees included in this group of three hundred fifty-eight and three hundred sixty-two were changing during this period although the number remained close to constant, is that correct?

A. So you understand the picture perfectly, the temporary replacements were not included in this figure.

Q. They were not included in the figure three hundred and fifty-eight?

A. No, because we didn't consider them active bargaining unit employees. They were just temporary employees.

Raymond Bertone—Cross.

- Q. Were they included in the non-bargaining unit employees?
- A. Neither one. They were just temporary employees.
- Q. Now you stated to me that as the temporary employees left you recalled bargaining unit employees, strikers who went out on March 31st, is that correct?
- A. I called them at the request of operation managers, what they needed to keep production going.
- Q. During this period of June 29th to July 27th, there were only four such employees called back?
- A. Yes, that could be possible.
- Q. It could be possible. Is it the case?
- [433] A. Yes, sir.
- Q. You handled recalls, didn't you?
- A. Yes.

Mr. Wayman: Let him finish his answer. I think he was about to explain something.

Trial Examiner: Go ahead.

The Witness: This figure we have, this total figure is when the temporary replacements were let go.

- Q. (By Mr. Davidson) They were already out?
- A. They were being let go.
- Q. And the three hundred fifty-eight would include the number of employees who had already been recalled?
- A. Yes, I am afraid it would be to make this figure correct. You are right.
- Q. About how many recalled employees would be in this? About a number equivalent to the temporary replacements that you had?

Raymond Bertone—Cross.

A. It depends, sir, on what the operation manager needed. Maybe we let fifty-seven TR's go and maybe only had a request to call back forty people.

Q. Those numbers are about average?

A. Yes.

Q. And the further fluctuations as these numbers increased represented the additional recall of strikers?

A. Yes, sir.

[434] Q. I take it—I won't take it; I will ask you. Among those employees who were recalled during this period, do you recall what seniority they had, what the cut off dates were for recall?

A. During the strike jobs were eliminated that strikers were on due to the changing complection of our production requirements. Some of these jobs were held by very high senior employees, '41, '42, '43 seniority, and those people whose jobs were eliminated were called back in that order, '41, '42, '43, '45 until we eventually got down to our lay off people.

Q. Can you remember what numbers actually were involved?

A. You mean numbers called back?

Q. No, what number of years of seniority?

A. When I say '41, I am talking about nineteen years, seventeen, sixteen, fifteen, down the line.

Q. That was during this period up to let's say July 27th when there was three hundred sixty-two people. It could even have gone lower?

A. No, sir, no, sir, because there is—I remember as of August, during the month of August, we still had people with approximately thirteen, fourteen years seniority that had not been called back yet.

Raymond Bertone—Cross.

Q. And those were recalled later?

A. Yes, as openings came up.

[435] Q. Now can you explain to us what the mechanics were when a new employee or striking employee or laid off employees came in during the strike and it was decided to put him on a job which had been previously manned by some other employee prior to the strike? How was it determined who he would replace?

A. By the junior one on the classification that was in existence, that people were classified on, as our classifications of March 31st.

Q. This was an instruction I take it which you gave to your various operating men?

A. That is correct.

Q. Did you check on that during the course of the strike from time to time to see this was being carried out?

A. Yes, sir, I did.

Q. When you compiled your list on June 25th did you discover any instances in which this had not been followed?

A. Not on June 25th, because I was in a hurry to get the list for the union.

Q. In checking later did you make corrections on the list?

A. Yes, sir.

Q. That you discovered in fact the wrong employee had been listed by an operation manager as replaced?

A. Yes.

Raymond Bertone—Cross.

Q. Do you recall about how many corrections were made?

A. Eight, about eight. I don't know—I may be off—six [436] or eight.

Q. Can you recall the identity of any individual at this point?

A. Yes, I can. I know one good case.

Q. You know one good case?

A. Yes, because Mr. Bordonaro kept reminding me of it, after the strike was over.

Q. Can you tell us about that?

A. Yes, in the case of Peter Irene. Mr. Irene was classified as a plastic molder, as of March 31st. Mr. Irene at that time was our most senior operator in molding with approximately '41, '40 seniority, which is approximately nineteen years. On the list of June 26th when I gave it to the union I had Mr. Irene's name down. Mr. Bordonaro asked me to check this—I mean he believed there was some discrepancy. So I did check it and I found out through investigation that Mr. Bucceri who was then in Department 3 on job 547 had accepted a recall back to plastic molding to report April 1st, so as of April 1st Mr. Bucceri should have been on the plast molders list of job classifications, so as to be fair about this, and as far as I am concerned it was a very serious thing and I then took Mr. Irene off the list and submitted Mr. Bucceri because under our policy Mr. Bucceri should have been the man that should have been replaced.

Q. So Mr. Bucceri was then listed as a replacement?

[437] A. As a replacement, and Mr. Irene was taken off.

Raymond Bertone—Cross.

Q. In correcting the other seven instances when you discovered the wrong employee was listed as replaced, what did you do?

A. Either listed it as being wrongly replaced or just not being on the June 25th list.

Q. As having been replaced?

A. As having been replaced, correct.

Q. What did you do? Did you then add them to the list?

A. Yes, added, or if there were any to take off, I took off the man who was erroneously listed as replaced.

Q. And you put another man in his place?

A. Yes, sir.

Q. Which was the first time you ever identified the other man, is that correct?

A. How do you mean, sir? You mean when I asked to check?

Q. The man who was added?

A. Yes, sir.

Q. One other question on mechanics as to how these things worked. I take it there was some job classification which you had prior to the beginning of the strike, five employees?

A. Yes.

Q. During the course of the strike you found it necessary to eliminate two of the jobs so there were three remaining?

[438] A. That is correct.

Q. And I believe this also actually happened—correct me if I am wrong—on such a case three employees came in who were qualified to do the job and were assigned to it, whom did they replace? The three junior employees on this classification?

A. The three junior ones who were left after we reduced the operation. For example, if we had five people with seniority dates, '40, '42, '43, '46 and '47 in that order, if we decided we only needed three people and the two bottom people were no longer needed on that job.

Q. And they were put on what?

A. It isn't the idea put on. It just was eliminated. We only needed three for that operation. Now if a replacement came in to fill this requirement that we needed, then the third person on the list was replaced.

Q. And the next replacement replaced the second person?

A. That's right.

Q. And the next one replaced the first?

A. Yes.

Q. So you didn't replace the three junior people on the job after March 31st, is that correct?

A. In some cases—let me qualify that.

Q. You can qualify it but you can answer my question first.

A. We only did this if the person was previously classified [439] on the job when they came in. Let me explain what I mean. If a girl was on a certain job, the '47 girl, the '47 girl, the junior girl, her job was eliminated, we only needed three people so she came in during the strike, so would come back to her former job she had, but she then replaced the junior girl.

Q. She was the junior girl, is that correct?

A. No, she wasn't any more because we didn't need her on that job any more but if she came back to this

Raymond Bertone—Cross.

job, then she became the junior girl to replace the next junior girl on this classification.

Q. Let me see if I can recap this now. The way you worked this was this. You had five jobs and you decided you only needed three.

A. Right.

Q. The bottom two people you didn't consider as being on this job?

A. That's correct.

Q. When the bottom two people came in they didn't go back to their old job. They replaced the two people senior to them, is that correct?

A. If they went back to their former job, that is correct.

Q. Mr. Bertone, would you be able to obtain for us the job classifications of job 529 and 530—let me ask you first do you have written classifications for these two jobs?

[440] A. Yes, we do.

Q. Can you obtain them for us?

A. I believe so.

Mr. Davidson: I would like to have the witness obtain them for our examination.

Mr. Wayman: That shouldn't be too difficult.

Trial Examiner: I am not going to delay any examination on this. We have all headed into this business of asking the witness to get something, dig up something else.

Mr. Davidson: I have no intention of delaying the hearing. Couldn't it be obtained?

Raymond Bertone—Cross.

Mr. Wayman: I don't think you can look at me and ask me that because I don't need them and I don't know what you intend to do with them.

Mr. Davidson: All I want to do is put them in evidence.

Mr. Wayman: You can't put them in evidence without asking the witness what they are, and giving him a chance to explain.

Mr. Davidson: May I examine them—

Trial Examiner: You can examine them if they are here.

Mr. Wayman: I have^d no objection to getting any facts that are material to this case into the record, but I don't want to delay the hearing. I think if these things were wanted, they should have been asked for before. I have no [441] objection to getting them but we can't put them in evidence just as pieces of paper.

Mr. Davidson: This witness has testified as to the contents of these two jobs and I think it becomes relevant at this point through his testimony—I think they are relevant to his testimony at this point. I think his testimony describes something which is an established written policy of the company, and I think an established written policy is better evidence and they will corroborate what the witness says.

Mr. Wayman: The request should have been made earlier. I don't object to any fact going into this record as long as it is relevant.

Raymond Bertone—Cross.

Trial Examiner: If you can get it, you might get it and give it to him but this thing now has just become chronic. Can you get this for me, and can you get that for me.

Mr. Wayman: Of course, we can but we don't have it here. You don't have it with you, do you, Mr. Bertone?

The Witness: No, sir, I don't.

Mr. Davidson: I have no desire to hold up the hearing. I would like to see it and I will fight the battle over, if necessary.

Trial Examiner: Go ahead. Continue with your examination.

Mr. Davidson: I believe that's all I have.

Trial Examiner: We will take a five minute break.

[442] (Recess.)

Trial Examiner: All right, the hearing will be in order. Go ahead, Mr. Fleischut.

Q. (By Mr. Fleischut) I am referring to respondent's exhibit 12, addressing myself to the clerical column. These one hundred forty clerical worked on bargaining or production and maintenance jobs during the strike, is that right?

A. Yes, sir, they did.

Q. And you cover the period of May and June but the strike actually commenced, of course, at midnight on March 31st, is that right?

A. Yes.

Q. Did they work in bargaining jobs about April 1st?

A. Yes, sir, we all did for the whole month of April.

Q. And you say none of these clerical employees remained in bargaining unit jobs after the strike, is that right?

A. Not to my recollection.

Q. Did you give them the opportunity to remain if they wanted?

A. No, sir.

Q. You didn't give them that choice?

A. No.

Q. They went back to their old jobs?

A. They should have.

Q. They didn't get any superseniority?

A. No, sir.

[443] Q. I direct your attention to general counsel's exhibit number 32, the list of replaced employees and their replacements and I am directing your attention to those employees on that list who did not request reinstatement as the list is prepared?

A. Yes, sir.

Q. You have been present through most of the trial, have you not?

A. Yes, sir, I have.

Q. And you have heard the conversation the day concerning Wilford Hamm?

A. Yes, sir.

Q. Did you check to see if he had filed an application?

A. Yes, we did, and we found one he had filed for reinstatement and it is in our file.

Q. Do you know the date of that?

A. I am sorry, Mr. Fleischut, I didn't check the date, but I confirmed he did file an application.

Raymond Bertone—Cross.

Mr. Wayman: I perhaps can help out. I looked at it and it was September 9th.

Q. (By Mr. Fleischut) And Danny Camino, did you check his?

A. Yes, but I did not find one for Danny Camino.

Q. Julia Sulkowski?

A. I checked and didn't find one for her either.

[444] Q. Rather than go through them name by name, I think there is approximately eighteen or twenty names who did not request reinstatement. Did you check the others?

A. No, I did not.

Q. You just checked those three?

A. That is right, that I was requested to do so.

Q. As far as you know, the others have not applied for reinstatement?

A. To my knowledge, yes.

Q. To this time?

A. As of this date, yes.

Q. Now directing your attention to the time when the strike is over, and you are now bringing on—bringing the replaced employees back to work, is that correct?

A. Yes, in seniority order.

Q. In the order of their seniority?

A. Right. Now Mr. Fleischut I want to qualify that. Those people who were brought in seniority order are those people whose jobs were not eliminated during the first week after the strike was over. After the strike was over many of the people who were out on strike came back to their jobs that they were not replaced on and were needed immediately so people

were called out of seniority order for those two weeks. I would say about two weeks. For example, in our pulse transformer department where we had experienced operators [445],—this is a very highly specialized product to make—we did have girls come back with '50 seniority because they were on that job when the strike commenced.

Q. What do you mean by '50 seniority?

A. I am sorry. Ten years seniority. I go by dates. What I mean is they were employed in 1950.

Q. Were they called in seniority order or out of seniority order?

A. Not for the first two weeks.

Q. After that you brought them back in seniority order?

A. Those whose jobs were eliminated during the strike, that is correct.

Q. Either during the first two weeks or after the first two weeks were over an employee came up for recall, his name came up?

A. Yes.

Q. And you had a job?

A. Yes.

Q. But his own job was gone?

A. Yes.

Q. You had other jobs?

A. Yes, requisitions from our operations manager.

Q. Would you then offer these people you were recalling jobs available when their old job was gone?

A. That's right, the senior one would be offered the first [446] opening, correct.

Q. But you took the twenty years seniority for those who had it into consideration in placing the people who did not have it after the strike, is that correct?

Raymond Bertone—Cross.

A. No, the twenty years only applies on lay off. For all other purposes regular seniority rules, as far as job bidding or posting, reduction of force or what-have-you.

Q. Well, an employee with ten years seniority—

A. You are talking about straight seniority?

Q. You are calling him up, a striker you are calling him up to go to work?

A. Right.

Q. And he is qualified to do the job?

A. Yes.

Q. But somebody is in it for twenty years super-seniority. You are not going to bump the man with superseniority, are you?

A. No, sir, because the man is being called to an opening. It is not a reduction of force. This was not a bump. The man was being called back to an opening.

Q. You only recall people to openings?

A. That's right, that's all I could do under our procedure. I can only put a man on when I have an opening.

Q. So let's suppose there is a job—

A. Right.

[447] Q. And there is a man in the job with five years seniority.

A. Right.

Q. And you recalling another man and he has ten years.

A. Right.

Q. The man with ten years can't bump the man with five years, is that right?

A. That's right, not on a recall from lay off.

Q. You only recall to available jobs?

A. That's right.

Q. You don't recall and do a lot of bumping?

A. No.

Q. You recall only to openings?

A. Right.

Q. This is by contract, is that correct?

A. Yes, sir. Mr. Fleischut, let me explain one thing, sir, the reason why a lot of these people were called back from the strike so readily is that as openings came up after the strike, they were posted in accordance with our contract.

Q. The openings?

A. Openings were posted.

Q. And they could bid on the openings?

A. Yes, they could bid but all the people we had in the plant with regular seniority had less than the people on lay off, so they were called back without any question. These people just couldn't bid. They didn't have the regular seniority [448] to bid for the job. That's why we had such a rapid return of the senior people from lay off.

Q. Let me give you an example, a specific example, if I may. You recall you and I in my office one time talked about Mr. Robert D. Blunt, is that correct?

A. Yes, sir.

Q. He was a maintenance electrician. If you recall what was his status among maintenance electricians before the strike? Was he high or low?

A. He was high. He was the only one in our plastics division.

Q. He was the only maintenance electrician there?

A. Right.

Raymond Bertone—Cross.

Q. The strike was over and you called him up?

A. Right, sir.

Q. Why didn't he go back as a maintenance electrician?

A. Because we no longer needed a maintenance electrician in the plastics division.

Q. For economic reasons there was no job opening?

A. His job was eliminated.

Q. Were there job openings in other departments for maintenance electricians?

A. Yes, there was and I called him back.

Q. For maintenance electricians in other departments?

A. No, sir.

[449] Q. So there was just no job for a maintenance electrician available for him?

A. That's correct.

Q. So you offered him another job?

A. That's right.

Q. But you could only offer him jobs that were not filled is that correct?

A. That's correct, whatever we needed.

Q. And it didn't matter whether the persons that filled those jobs had one day's seniority or a hundred years seniority, he couldn't bump in on them, could he?

A. Not unless he was reduced, sir.

Q. You know what I mean when I use the word bumping?

A. Yes.

Q. In other words, he hasn't got any claim in this case because superseniority had nothing to do with his ability to take the job?

A. That is correct.

Q. You told these people their jobs wouldn't end when the strike was settled?

A. That's correct, they would not be laid off or discharged.

Q. That question was a little out of context. Let me start from the beginning When you—did you discuss this with the people when they actually came to work, is that correct, or when you interviewed the replacements?

[450] A. I told them, sir, if I accepted them as an employee.

Q. You accepted them as an employee. Now you are an employee.

A. Yes.

Q. Now you told them "your job will not end when the strike is settled"?

A. I didn't say their job would not end. I said they would not be laid off or discharged.

Q. When the strike was settled?

A. That's right.

Mr. Fleischut: Nothing further.

Mr. Wayman: I have just about two questions, if the trial examiner please.

Trial Examiner: All right.

Mr. Wayman: In response to the last question as to what you told people when you interviewed or hired them, it is my recollection you did not say this to temporary employees?

A. That is correct, they were not told that. What they were told their status would be temporary. They

Raymond Bertone—Cross.

may work five minutes, or they may work—we don't know. It was indefinite.

Mr. Wayman: You did tell the permanent people such?

The Witness: That they would not be laid off, yes.

Mr. Wayman: What was the source of these temporary replacements?

The Witness: College students.

Mr. Wayman: Did you yourself do any production work [451] during the strike?

The Witness: Yes, sir, I did.

Mr. Wayman: What did you do?

The Witness: Molding press, ran the molding press, and did finishing operations in plastics.

Mr. Wayman: I have no more questions.

Trial Examiner: All right, you may step down.

Mr. Davidson: Just a minute, there is one thing that has been raised by Mr. Wayman's last few questions. Mr. Bertone, do you remember the three people as to whom there were stipulations yesterday?

The Witness: Yes, I do.

Mr. Davidson: And you testified earlier as to Hamm, Hugh Nelson, Carol Rippley and Jean Good, I believe. One of those three left in September to return to school?

Lewis J. Shiolen—Direct.

The Witness: According to her personal history card, yes.

Mr. Davidson: Was she also a college student?

The Witness: Again, as I said, Mr. Sparks my associate helped me interview these people. I probably didn't see the application. Whether she was or not I don't know.

* * * * *

[454] LEWIS J. SHIOLENO, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner: Will you state your name for the record?

The Witness: My name is Lewis J. Shiolen.

Trial Examiner: Where do you live, Mr. Shiolen?

The Witness: I live at 1414 West 43rd Street, in Erie, Pennsylvania.

DIRECT EXAMINATION

Q. (By Mr. Wayman) What is your job, Mr. Shiolen?

A. I am general manager of the Erie Electronic Division which is on West Twelfth Street, in Erie, Pennsylvania, and I have been doing this for about two and a half years.

Q. You were the general manager of this division during the strike of 1959?

A. Yes, I was.

Lewis J. Shiolen—Direct.

Q. Will you tell us briefly the duties of general manager in this division?

A. A general manager in this division is responsible for product development which is a phase of engineering, product testing, product sales, services, service functions which are quality control, order writing, customer service, shipping and receiving, what-have-you, billing, maintenance, building [455] maintenance, building construction, manufacturing, industrial services, and the responsibility for accounting and personnel morale within the plant.

Q. Can you tell us the nature of the business of the Erie Electronics Division?

A. The term Erie Electronics—of course, Erie is related to the Erie Resistor Corporation. The electronic components is an accepted term in the industry which means any part that goes together in another system using electrical energy as a source. This would be a computer, a guiding system, what-have-you. However the type of components Erie Electronic manufactures are the small devices which are—which go into the black boxes that go into the black boxes, et cetera, minute components which you can put in your hand, as compared to a locomotive or anything like that.

Mr. Wayman: I am going to offer in evidence—

Mr. Davidson: I object.

Trial Examiner: Let counsel finish. Go ahead.

Mr. Wayman: I ask this box be marked respondent's exhibit 14.

(Thereupon, a box was marked Respondent's exhibit 14, for identification.)

Lewis J. Shiolen—Direct.

Q. (By Mr. Wayman) Mr. Shiolen, I show you a plastic box which has been marked for identification, as Respondent's exhibit 14, and ask you what that is?

[456] A. This is referred to as a sample kit which represents one hundred and three variations of the components we manufacture for the various industries we serve. Actually there are some twelve thousand variations of these one hundred three variations.

Q. These are the products, or example of the products you manufacture in the division itself?

A. Yes.

Mr. Davidson: I object. I would like to know the relevancy of this line of questioning.

Mr. Wayman: We intend to show the nature of this business and the necessity for keeping the plant open and the necessity for having people make these parts. It is certainly relevant.

Trial Examiner: Go ahead. I will consider this as preliminary.

Mr. Wayman: I will offer respondent's 14.

Trial Examiner: Is there an objection?

Mr. Davidson: I object on the grounds of relevancy. This is something we can assume this company is in business to make products and to make money and to serve other people. This is what most businesses exist for. I don't see there is any special factor in this which has anything to do with this case, and the issues in it.

Mr. Wayman: Perhaps if we were to go ahead with our [457] questions it would be relevant.

Lewis J. Shiolen—Direct.

Trial Examiner: I will receive this sample kit in evidence as respondent's exhibit 14.

(The box heretofore marked as Respondent's exhibit 14, for identification, was received in evidence.)

Q. (*By Mr. Wayman*) Will you tell us who are your competitors in this business?

A. The components which I refer to as electronics which we manufacture, we have approximately fifty competitors in the United States alone and some of these are Sprague Electric, High Q Division of Varivox, Tetra System, Mada Radio Materials, Radio Industries, Speer Carbon, Central Lab Division of Globe—

Trial Examiner: I think that's enough. We can't go through the whole fifty.

The Witness: This covers the basic domestic competition, and then we have a serious competition from the foreign imports, particularly Japan which are many and often cheap.

Q. (*By Mr. Wayman*) How are most orders for these components placed?

A. The ordering process actually takes place in about four different mediums and the primary one is telephone. The customer will call up and ask for delivery of a given order [458] within a matter of days and then if we can't supply they can, of course, go to fifty of the other competitors; by direct sales, and by TWX Western Union and by letter, but primarily forty per cent of the orders are received by telephone from our customers.

Lewis J. Shiolen—Direct.

Q. Does delivery date play an important part in the placing and retention of orders?

A. Delivery problem is one of the most serious ones we have on the basis there are so many competitors and the type and variety of products we are not able to perform a store house for this type of thing. We manufacture it from the beginning and as such we have to be able to deliver within a matter of days and not weeks, as such.

Q. Will you tell me whether or not you prepare a forecast of sales periodically?

A. Yes, sir. I, in conjunction with the general sales manager, who works directly with me and the vice president in charge of marketing set down about three months before the end of the year and prepare a forecast for the coming year.

Q. Did you make such a forecast for the year 1959?

A. Yes, we did.

Mr. Wayman: I am going to ask these papers be marked respondent's exhibit 15.

(Thereupon, documents were marked Respondent's exhibit 15, for identification.)

[459] Q. (*By Mr. Wayman*) Mr. Shiolen, I will show you a document marked for identification respondent's exhibit 15 and ask you what that is?

A. This is the forecast of each of the major product lines within the division by accounting periods, by product breakdown, by pieces and by dollars.

Q. When did you prepare this forecast?

A. This particular one is a revised forecast of the original one for 1959. We had originally prepared one in October and November, towards the beginning of

Lewis J. Shiolen—Direct.

November, 1958, and then we were required to revise this particular forecast after the first quarter of 1959.

Q. Will you tell us briefly what this forecast represents, what are you forecasting?

A. These are forecasting our share of the market which is available for the technical components that we manufacture. To the best of our ability and our historical information and contact with the various purchasing people.

Q. This is the business you expect to get?

A. Yes.

Q. This is not orders already on your books?

A. No, sir.

Mr. Wayman: I offer respondent's exhibit 15.

Mr. Davidson: I object to it. This is conjectural, self-serving and if we went into this thing to determine how [460] it was made up, we would spend days investigating it. I don't think this has any probative value in this case.

Trial Examiner: I think it may be received in evidence for what the witness has identified it as, as a forecast of sales for 1959. To that extent I think it may be received in evidence. Over ruled.

Mr. Fleischut: No objection, subject to relevancy.

Mr. Davidson: I have a continuing objection.

Trial Examiner: It is received.

(The documents heretofore marked Respondent's exhibit 15, for identification, were received in evidence.)

Lewis J. Shiolen—Direct.

Mr. Wayman: Will the reporter please mark this document as exhibit 16.

(Thereupon, a document was marked Respondent's exhibit 16, for identification.)

Q. (*By Mr. Wayman*) Mr. Shiolen, I show you a document marked for identification respondent's exhibit 16 and ask you what that is?

A. This is a similar form referred to as our 1960 forecast which was prepared by the same three people I mentioned before in December of 1959.

Mr. Wayman: I offer respondent's exhibit 16.

Mr. Davidson: The same objection.

Trial Examiner: I don't know where 1960 would be material.

[461] *Mr. Wayman:* It has a tendency to show how the forecast is borne out in normal periods. It is not essential to our case. The 1959 forecast is.

Trial Examiner: I can't see where the forecast for 1960 would be material. I am going to reject the exhibit.

(The document heretofore marked Respondent's exhibit 16, for identification, was rejected.)

Q. (*By Mr. Wayman*) Now, Mr. Shiolen, do you recall the strike of 1959?

A. Yes, sir.

Q. Did the Erie Electronics Division operate during that strike?

A. Yes, it did.

Lewis J. Shiolenq—Direct.

- Q. As of March 31, 1959, did you have a backlog of orders for these parts?
- A. We had a higher than average backlog of orders at that time.
- Q. Did you have any raw materials or parts in the plant to make these?
- A. Yes, we did.
- Q. Did you have any substantial inventory—I think you have said you didn't stock finished parts and you didn't ship from stock.
- A. We had what is commonly referred to as in-process inventory, which is a normal inventory from operation to [462] operation in order to keep going, but we did not stock finished items as such.
- Q. About how long does it take to process an order through that plant under normal conditions?
- A. The average order cycle from the time we get the order until the time it is shipped, is about fifteen days, and this would have to be construed as fifteen working days and not calendar days.
- Q. Were any of the orders cancelled during the strike?
- A. Yes, they were.
- Q. Can you think of any particular order that was cancelled?
- A. The most significant one was by the Philco Corporation which is one of our top customers, as such, and they called up the very next day and cancelled all open orders.
- Q. The very next day after what?
- A. After the strike was in effect, which was April 1st.
- Q. Did your plant Erie Resistor, Erie Electronics Division, produce any materials during the strike, any finished product?
- A. Yes, we did.

Q. Did you ship anything?

A. Yes, we did.

Q. Do you make a record of your shipments, a running record?

A. Yes, sir, always.

Mr. Wayman: I will ask these charts be marked respondent's exhibit 17.

[463] (Thereupon, a document was marked Respondent's exhibit 17, for identification.)

Q. (By Mr. Wayman) Mr. Shiolen, I show you a set of three charts which have been marked for identification, as respondent's exhibit 17, and ask you what they are?

A. This is what we refer to as a control chart on shipments using dollars as one control and weeks of the year as the other in comparison to the actual forecast which we had made at some previous time. The first chart is the actual result of the 1958 year. The second one is of 1959 and finally 1960.

Q. I notice there are thirteen blocks or squares. What do they represent?

A. The thirteen divisions of the Erie Resistor Corporation financial break down of periods where the average method is to use months, we use periods which there are four equal weeks in each one, four seven days weeks, thus giving us an easy reference of one year to another.

Q. I notice you have filled in with green pencil apparently three of the numbered accounting periods on the chart for 1959.

A. That's right. Those are the accounting periods in which the strike was in effect.

Lewis J. Shiolen—Direct.

Q. What are the blue lines on this chart?

A. The blue lines were the forecast.

Q. What are the red lines?

[464] A. The red lines are the actual shipments during those periods of time.

Q. What are the black lines?

A. The black line with the actual by week, and the red line was the average of the four black dots during that particular period.

Q. These represent actual shipments?

A. Yes, sir.

Q. So by reference to this chart we can tell the relative number of shipments, orders, and anticipated orders during any of these accounting periods?

A. Yes, sir.

Mr. Wayman: I offer respondent's exhibit 17.

Mr. Fleischut: Objection as to relevancy.

Mr. Wayman: Let me say this—perhaps I should wait and see what Mr. Davidson has to say.

Mr. Davidson: I still fail to see relevancy to this whole line. I have got a continuing objection on this. I renew that.

Mr. Wayman: One of the things the Board pretty often criticizes employers for doing in cases like this is not showing it was economically necessary for them to operate their plants during the strike. It was economically necessary for us to operate our plant during the strike and this is the witness here who can testify to the proposition.

[465] *Trial Examiner:* I will over ruled the objections and the chart may be—

Lewis J. Shiolen—Direct.

Mr. Davidson: In my brief I would like to answer that.

Trial Examiner: I don't want that. I was prepared to rule on that before Mr. Wayman started, so it won't be necessary to answer. I will over rule the objection and the chart may be received in evidence as respondent's exhibit 17.

(The document heretofore marked Respondent's exhibit 17, for identification, was received in evidence.)

Q. (*By Mr. Wayman*) I will ask the witness directly. Was it necessary for you to operate the plant during the strike?

A. It absolutely was.

Mr. Davidson: I object. That's what he is trying to prove and he is asking this witness now what he is trying to prove.

Trial Examiner: He is trying to satisfy you. Over ruled. It may stand.

Q. (*By Mr. Wayman*) Have you finished?

A. No, I hadn't really finished. They said something and threw the whole thing off.

Trial Examiner: I think he finished. He said it was necessary to operate the plant and that answers the question.

Q. (*By Mr. Wayman*) I will ask you to give us the reasons on which you base that statement.

[466] *Mr. Davidson:* I object.

Trial Examiner: I think we were at the point where they had a backlog and they had materials,

Lewis J. Shiolen—Direct.

and Philco cancelled an order. Do you want to carry on from there?

Mr. Wayman: Yes, I would.

Trial Examiner: All right. You had a backlog of orders. What did you do? Process those orders?

The Witness: We weren't able to.

Q. (*By Mr. Wayman*) Why not?

A. We weren't able to process this large backlog of orders within the time required by the customers due to the limited number of people we had available to run the equipment, but the major portion is here it took about two and a half years to get approved at most of the customers for our components. In recent years all of the customers have introduced what is commonly referred to as data processing for ordering and as such most of them have limited the number of sources such as ourselves to three. We took about a year and a half to get most of these people's list and if you couldn't supply the materials we would then be dropped off and this would have a drastic effect upon our future business.

Q. Did you have any phone complaints from customers during this period about not receiving products?

A. Very definitely. I did and about seven other people.

Q. Who did the production work in the plant during the [467] first month, the month of April?

A. It would be in the general category of salaried personnel, clerical, engineers, management—you name it. Anybody that wasn't in the bargaining unit.

Lewis J. Shiolen—Direct.

Q. Were you able to get your production out with these people?

A. We were able to get a portion of it out, not to satisfy the customers but to get a portion.

Q. Using the pre-strike level of operations as one hundred percent, can you express the amount of production you were able to get in April in percentage?

A. It was in the area of thirty percent.

Q. Who did the production work during the month of May?

A. For the first week or so it continued to be this same group of salary and clerical people, and sometime around the week of May 11th we started to get replacements into the factory for the previous employees, and as such we were able to get some more production out.

Q. Can you express this production in the month of May in terms of percentages?

A. The first two weeks of May it remained approximately the same level but the last part of May we were able to get up to forty percent of the pre-strike level.

Q. During the month of June did you get any production?

A. Yes, things were able—we were able to produce [468] larger quantities and by the end of June, which the reference would be sometime during the week of June 22nd, from there on, we were able to get as high as seventy-five percent of our production back up.

Q. Just before the end of the strike?

A. Yes.

Lewis J. Shiolen—Direct.

Q. Did you receive any new orders during the course of the strike?

A. Yes, sir.

Q. Again referring to the pre-strike level can you express the amount of new orders received during the strike in terms of percentage?

A. In relations to the level we had obtained, it would be about seventy percent.

Q. Now, Mr. Shiolen, as general manager of the electronics division did you participate in the policy meetings held by management during the strike?

A. Yes, I did.

Q. Did you participate in negotiations?

A. Yes, I did.

Q. Did you participate in the decision to have permanent replacements?

A. Yes, I did.

Q. Will you tell us in your own words when this decision was made and under what circumstances and who was there and [469] so on?

A. Yes, sir. After attempting to run the plant during the month of April at this low level it had made it very difficult for us to maintain any type of customer satisfaction which is one of our primary responsibilities and as such as general manager it was my responsibility to go back to management and request some decisions be made here to get the plant in full production. The partial production work just was not satisfactory to continue at this pace. Towards the end of April we had set down and talked this thing over and when I say we I am implying Mr. Ferrell, Mr. Schau, Mr. George Fryling.

Q. We know who Mr. Ferrell is and who is Mr. Schau?

A. He is general manager of the plastics division.

Lewis J. Shiolen—Direct.

Q. And you say Mr. George Fryling?

A. Mr. George Fryling, the vice president in charge of operation, and G. Richard Fryling, the president, and Mr. Shenk, vice president in charge of sales, and Mr. Heibel, vice president in charge of planning, and Mr. Minnium, vice president in charge of engineering. There may have been a couple of others. I am not sure, but our problem here was try to determine a method of getting the plant back to full production and as such we exhausted any other ideas we might have had and embarked upon a plan of replacements. At that time Mr. Murphy was there and reminded us the plan [470] of replacements meant that we were going to be doing certain things that would eliminate people's jobs if this policy was put in. We became very aware of this and as a result we actually thought about this for several days and finally we composed a letter—in the event we decided to go ahead with the plan, we would send this letter out on May 3rd. To my recollection, we had a meeting on Sunday evening—about eight o'clock we were scheduled to be there, and we sat around the room for another couple of hours.

Q. When was this?

A. On Sunday, May 3rd 1959, to decide whether we embark upon this program of replacements or don't we, because it was a very serious decision. It meant people were going to be permanently replaced in jobs who had previously worked for the Erie Resistor Corporation for many years, and it was a difficult problem as far as making a decision along this line. Finally with no other recourse, we embarked upon this by mailing the letter that evening, and I

think we received applications from the people on the 4th of May.

Q. Tell us whether or not you participated in the decision to establish the so-called twenty year seniority policy?

A. Yes, I participated in this.

Q. Will you tell us when and under what circumstances this decision was reached?

A. Well, there were circumstances that led up to that particular decision in the fact that when we embarked upon [471] this replacement plan we weren't able to get the people in the plant required to bring it back to full production. There were some occurrences during the month—excuse me—during the week of May 3rd through May 8th which reflected on our ability to bring people in, and finally on May 11th we were able to get one or two in, or whatever the case may be. However, that week it was still at a very slow pace. It was just impossible to get anybody to cross the lines and to come to work under any conditions. We realized back on the 3rd this was going to be a definite problem and we were discussing this on the 3rd and means of insuring people jobs who did come to work. We were—myself, I had been involved in management for a few years and Mr. Schau general manager of the plastic division for quite a few years and we were very familiar with our stringent seniority clauses, the union shop clauses in our contract, and as such would not be able to assure these people jobs unless we were to provide some mechanics to insure them that they would not lose the job at the end of any settlement of the strike itself.

Lewis J. Shiolen—Direct.

Q. All right, now I suppose this decision was reached in some sort of meeting?

A. Yes, there were many meetings before, between the week of May 11th and the end when we had toyed with many ideas of separate lists, a seniority list equal to the union officers, and all types of things like this. Finally we arrived at [472] the idea if we were able to use the twenty year addative to any one who would come to work under these conditions this would provide them with enough service to work for some period of time. As mentioned before, the forecast was so determined, you could interpret those backwards to determine how many people would probably working at the end of the year, and as such we used this as a guide to determine what number of years would be necessary in order to keep these people and give them job assurances. The meeting actually took place in Mr. Ferrell's office with Mr. Murphy and Mr. Schau and myself and we toyed around with that for quite a while and finally reduced it to writing and when we went to negotiations I believe the 28th we mentioned it. We did not give them a piece of paper but we mentioned it to the union's negotiation committee at that time, seeing we were not able to arrive at any other method of insuring jobs that we would use—we would then propose this twenty year addative plan, and we would use it.

Mr. Fleischut: I object to this entire answer. It is merely a self-serving declaration and of no probative value.

Trial Examiner: Well, again, this is something that was discussed by management representatives

Lewis J. Shiolen—Direct.

as the reason for putting in the twenty year plan. Let me ask you this. Did you mention any of these reasons that you have outlined [473] here to the union committee?

The Witness: Yes.

Trial Examiner: At the meeting of May 28th?

The Witness: I couldn't state positively that day but on many occasions that they—probably some at that time. I was not the official company spokesman but a lot of times I would add comments as to the reasons for this.

Trial Examiner: I will over rule the objection and the answer may stand. Go ahead, Mr. Wayman.

Q. (*By Mr. Wayman*) Now, Mr Shiolen, did you on any occasion tell the employees, production and maintenance and other employees in the electronics division, about this decision?

A. Yes, sir, it was my personal policy throughout the strike to hold daily meetings—this is from the beginning on, to keep everybody inside the plant as well aware of the conditions of negotiations and the problems we may have, as well as the most important problem, to keep the morale up on a daily basis, in order to keep them coming back to work and right after the first replacements came in the plant, which was in the week of May 11th I in one of my talks definitely said there would be some means of job assurance, that you would not lose your job as a result of the settlement of the strike and there would be a plan instituted that would guarantee this as such, and then after we had presented this idea to

the [474] union, the negotiating team, I think again the date is May 28th, that following week I then told the entire group, the working group in the electronics division that we were not able to come to an agreement in negotiations on this and as such we were going to go ahead with this twenty year plan, we were going to use it and that was the way it was going to work. This was—however I did add—I want to add to that—however, if there is a plan which is equal to or better than that could be agreed upon in negotiations we were certainly open to anything of this nature. It wasn't until the notice was actually posted on the 15th of June, I then got up before this posting—Mr. Schau was there and Mr. Ferrell was there—and I got up in front of the group and stipulated to them this was the policy we were going to use. I explained it again and for their further communication there would be a notice of it on the bulletin board but at this meeting they would have the privilege of looking at it and any questions I would be glad to answer.

Q. Mr. Shiolen, I would like you to look at charging party's exhibits 1 through 3. Will you refer to those exhibits please?

A. Yes, sir.

Q. Do you recognize that form?

A. Yes, sir.

Q. Can you tell us what it is?

[475] A. This is a pink form designed by Mr. Murphy and Mr. Ferrell and myself as resignation form to go along with the maintenance of membership clause that we had tentatively agreed upon in the negotiations. This particular form was designed on

Lewis J. Shiolen—Direct.

June 25th to the best of my recollection in Mr. Ferrell's office. However, we did not—we were not able to formalize it until the 29th or so of June, where we then had it printed. This was printed in our own print shop.

Q. What did you do with this form?

A. We held it back after it was printed until I could conduct another meeting inside the plant to explain the use of it, what it meant and the maintenance of membership clause in the contract meant. At this time I got before them and I held up blank cards—there was another part on here, the resignation card, that green card commonly referred to as check off of dues, and a white card which is commonly recognized as joining the union. I got before the group and explained the three of them.

Q. Approximately what day was this?

A. This was on June 30th to the best of my recollection.

Q. All right.

A. I got before the group and I suggested here are three mediums, the green one and white one actually go together. If you join the union, you must sign a check off of dues under section 3 of the contract. I said it is your personal [476] responsibility to make a decision whether you would like to belong to the union, or you would like not to belong to the union. I said the pink card is available and if you would like to resign, and as such if you would like to join the white card is available. I also stipulated every foreman and operation manager would have these on his desk and you can get the same by going to that particular desk.

Lewis J. Shiolen—Direct.

Q. Now to the best of your recollection, you say this was about the 30th of June?

A. Yes, sir.

Q. Were the cards then made available immediately?

A. Yes, sir.

Q. Mr. Shiolen, during the period of the strike did you receive any complaints from employees who were working about difficulties encountered in crossing the picket line, through threats, damage to their homes?

A. Yes, sir, as I said before—

Mr. Davidson: Same objection to this.

Mr. Fleischut: Yes, I object.

Trial Examiner: I am not going to go into this matter of violence. I am going to sustain the objection. You may make an offer of proof.

Mr. Wayman: I simply offer to prove by the witness—

Trial Examiner: You don't have to make the offer right at this minute. You can wait until later, if you like.

[477] *Mr. Wayman:* I may wait until later. I will wait until later. I have no further questions on direct of Mr. Shiolen.

CROSS EXAMINATION

- Q. (By Mr. Fleischut) Mr. Shiolen, on or about June 30th when you told the employees they could drop out of the union, did you tell them they were going to have a maintenance of membership shop?
- A. Yes, sir.
- Q. Now the red cards available to the employees to withdraw from the union, the cards charging party exhibit 1 through 4.
- A. That's right.
- Q. Is there not a perforated edge there and another section that is missing?
- A. Perforated?
- Q. Is that just half of the card?
- A. Yes, as I mentioned there is only half here.
- Q. What did they do with the other half?
- A. It goes to the payroll department as far as I can understand.
- Q. To the company?
- A. Yes, in order to reconcile the fact they had originally signed a check off card.
- Q. So the company would know who withdrew from the union?
- A. No, sir.
- Q. What?
- [478] A. No, the statement you asked me so the company would know the withdrew from the union, and the answer was no it was not. It was for a "reduction" in pay.

Mr. Wayman: Deduction, I think you mean.

The Witness: Deduction, excuse me.

Lewis J. Shiolen—Cross.

Mr. Fleischut: Nothing further.

Trial Examiner: Do you have any questions?

Davidson: Yes.

Q. (By Mr. Davidson) Mr. Shiolen, can you give us an approximate break down by percentages of the number of orders which came in with respect to the telephone, salesmen, TWX and letters?

A. Yes, about thirty to thirty-five percent and sometimes forty by telephone, but let me expand upon this to the extent the sales people themselves also telephone in, so the category of sales people and direct telephone calls would amount to fifty percent of the orders; TWX about ten and then the mail would be anywhere from thirty to forty. These are rough categories.

Q. Not every telephone order, I take it, is rush?

A. Every telephone call, every order is rush?

Q. Not every one?

A. The greater percentage of telephone calls are urgent, which means they want the orders in a matter of one week, two weeks at the outside.

[479] Q. Your customers, I take it, use the telephone by habit?

A. No, sir. You don't add extra cost for the sake of adding extra cost.

Q. How about your sales group?

A. No, sir, we have a direct mail system, with the sales people, where we receive a batch of mail every Monday and if the order is urgent—if it isn't that urgent, they send it in by mail.

Lewis J. Shiolen—Cross.

Q. When was the last strike which affected the operations at this plant?

A. The last one?

Q. Yes.

A. To the best of my recollection it was 1957.

Q. How long did that last?

A. I don't know. A week—a few days. I don't know.

Q. Not over a week?

A. I really couldn't say, honestly, but it was not thirteen weeks, that's for sure.

Q. Was it one week?

A. I could not say that.

Q. Could it have been just one day?

A. No, it was more than one day.

Q. Now in the discussions to which you refer, or in which the twenty year policy was arrived at—you stated you were involved in this discussion and you were familiar with the [480] seniority shop clause, the union shop clause.

A. Yes.

Q. Can you tell me the relationship the union shop clause had to this discussion?

A. Yes, the union shop clause implied everybody in the plant had to belong to the union, and as such they were all members of the bargaining unit as a means of employment, point one. Point two, because they were employed here we must follow the contract along these lines as far as the movement of people in line with their seniority, meaning the senior people are always working and the junior person is on lay off.

Q. Now would you answer for me again what was the relationship between the shop clause to the discussion of twenty years seniority.

A. I just feel it tied in, just like the other sixty-three sections are.

Q. You felt because there was a union shop clause in the contract it was necessary to make some provision similar to the twenty years?

A. Because of it specifically?

Q. This and other things.

A. Not because of the clause, specifically, no.

Q. What relationship did it have?

A. Just the related combination of facts.

Q. That related to the twenty years?

[481] A. Not related to the twenty years—related to the fact we had a seniority plan we had to follow.

Q. Related to the seniority plan you had to follow?

A. Yes.

Q. What was that relationship?

A. Just normal bargaining responsibility respecting the contract.

Q. Now what did you say when you were discussing this? Can you remember what you said about the union shop clause?

A. No, sir.

Trial Examiner: You mean with the union committee?

Mr. Davidson: No, he testified—

Trial Examiner: No, I know he testified quite some time as to the discussion among the officials.

Mr. Davidson: That's right.

Lewis J. Shiolen—Cross.

Trial Examiner: All right, let that stand and let's move into something else.

Q. (*By Mr. Davidson*) Did you discuss these reasons with the union?

A. On occasion.

Q. Do you remember what you said to them and when and to whom?

A. I can't remember specific dates or times but I remember discussions at some of the side-bar conferences with Angelo Colella.

[482] Q. What did you say?

A. To the best of my recollection, without giving it word for word, it was something of this nature. Angelo mentioned to me "Are you having any trouble getting any people across the line," and I said "Yes, we can't get them across the line," or maybe the words were to this effect—I am trying to recall the situation and not a specific quotation—the theory was "How many people have you got across the line," and my answer would always be "Not very many; we don't seem to be able to get them across the line unless we give them some kind of a job assurance."

Q. This was your discussion?

A. This was a reference.

Q. With Mr. Colella at what time?

A. I don't know.

Q. At a side-bar conference?

A. At a side-bar and some across the table conversations.

Q. You don't remember when?

A. No. It was after May 11th, I know that.

Q. These were the reasons you gave?

A. Yes.

Q. You did not personally participate in the hiring of any of the replacements, did you?

A. Are you speaking of the interviewing?

Q. The interviewing and the acceptance.

[483] A. Of the acceptance—there are two categories of acceptance. One is acceptance at the interviewing time, and one is acceptance at the time the person comes to work. When the person came to work, yes, I was there.

Q. You interviewed him?

A. I talked to him.

Q. Did you discuss with him this assurance?

A. Yes, sir.

Q. Before he was hired?

A. I said acceptance at the plant when they came to work. He had been accepted by the personnel department.

Q. He was already an employee?

A. Yes.

Q. When did you have this conversation or meeting in the shop at which you testified you told people in the plant that it might not be twenty years—that it would be a plan equal to it, or better? Do you remember that?

A. The week of June 2nd, 3rd, 4th—in there. I had a daily meeting with these people.

Q. During this period of June—

A. I had daily meetings from April 3rd all of the way through until—I think we still have them.

Q. These meetings were directed at the employees?

A. Yes, sir.

- Q. Now you referred to a speech at one of these meetings [484] in which you discussed this withdrawal card from the union.
- A. Yes.
- Q. What else did you talk about in this speech to the employees?
- A. On June 30th.
- Q. Whatever day it was?
- A. This is the date I discussed this. The main point was to discuss the movement of the people that was going to be occurring in the next few weeks and on top of that we had some fifty-five or sixty temporary employees who were college graduates and they had to be informed in the next few days they were going to be released because they were temporary. As far as the rest of the people, we had to have them understand what the maintenance of membership clause was, how it worked.
- Q. What did you tell them?
- A. We told them anybody here who would like to remain a member of the union has this prerogative; anybody would like to resign from the bargaining unit has this prerogative. It was their own personal decision at any times. Cards are available to transact either action.
- Q. And these cards, as I understand it, the withdrawal cards, was physically attached to the revocation and check off of dues, is that correct?
- A. No, there were three separate cards. The withdrawal [485] card is a pink card referred to here which had another section on it which was sent to our payroll for reason of stopping the deduction of union dues.

Q. That's right, those two cards were physically attached?

A. Yes, it was a perforated pink card.

Q. Did you explain to people they could fill out one of them and not the other?

A. Not to my recollection.

Q. This talk I take it to employees was during working hours?

A. Definitely.

Q. And they were paid for this time?

A. Yes, sir.

Q. Was this at a meeting or at their machines?

A. No, we gathered for meetings every day, usually in the production control office.

Q. Now in the course of the meeting, did you also talk to the employees about what would happen if no contract was signed?

A. I may have but not to my knowledge. I can't recall anything like that. Are you speaking about no contract, when? Any time? At this particular meeting?

Q. Either June 30th, July 1st or 2nd?

A. I don't recall that.

Q. Was there only one such meeting at which you spoke to the employees?

[486] A. There must have been a hundred of them.

Q. At which you mentioned the withdrawal card?

A. Only one at which I mentioned the withdrawal card.

Q. You recall in the course of this meeting telling people so far as their benefits were concerned, it made no difference whether or not they signed a card?

A. Definitely. This was always a point. There were absolutely no changes on any of the things, any of the

practices whatsoever that the management of the division had ever practiced.

Q. Did you also give them assurance at the same time, even if no contract was signed they would continue to have these benefits?

A. I don't recall that but the implication was there.

Q. How was the implication there?

A. From the day one throughout every meeting I conducted, we always professed we would not change any of our standards, meaning work practices at any time, any of our benefits, plans, whatsoever, regardless of anything.

Q. Whether or not a contract was signed, is that correct?

A. Well, now, this is not true. If the contract itself so stipulated that we change one of these, then we would have to follow the contract, yes.

Q. But if no contract was signed the benefits would continue?

A. Yes.

[487] Q. You made this assurance on the morning when you told them about the cards?

A. I will not say specifically on that date. One of the many meetings, yes.

Q. Did you ever invite a union representative to attend any of these meetings of the employees in the plant?

A. I don't really know.

Q. You conducted the meetings?

A. I think we did one time. I mentioned to somebody and I said "Why don't you come to the meeting if you want to hear what it's all about." This was during the negotiations and the guy said "How do you

George Schau—Direct.

get in?" And I said "Cross the picket line," and he said "You think I'm crazy."

Q. Who?

A. I don't remember. It could have been anyone of the negotiating team, but I don't know.

Q. You are familiar with all of them?

A. I am familiar with faces.

Q. Do you remember when this happened?

A. No, but I was being constantly—I will use the word, quote question, unquote, through the negotiations about our meetings inside. It was a referral joke, I think.

* * * * *

[489] GEORGE SCHAU, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner: Now, will you state your name for the record?

The Witness: George Schau.

Trial Examiner: Where do you live, Mr. Schau?

The Witness: 612 Oakmont Avenue, Erie, Pennsylvania.

DIRECT EXAMINATION

Q. (*By Mr. Wayman*) Mr. Schau, during the period of the strike in 1959 what was your job?

A. General manager of the plastics division of Erie Resistor Corporation.

Q. How long have you held that job?

A. Since the fall of 1956.

George Schau—Direct.

Q. Will you tell us briefly the duties of the general manager of the plastics division?

A. Actually, you are the chief administrative officer of the company, responsible for sales, engineering, production [490] and all of the allied functions related to those particular categories.

Q. Will you tell us the nature of the products that you manufacture in that division?

A. We are known as a custom molded company, house, which means we only produce products for specific customers and not a general product for general distribution.

Mr. Wayman: I am going to ask that this little polyethelene bag of plastic parts be marked respondent's exhibit 18.

(Thereupon, an article was marked Respondent's exhibit 18, for identification.)

Q. (*By Mr. Wayman*) Mr. Schau, I show you a little bag of what appears to be plastic parts that has been marked respondent's exhibit 18 for identification and ask you what it is?

A. These are samples of the type of work we perform in the division with particular emphasis on the fact, an example of using the blue with the decorative butterfly on it. This happens to be the decorative half of a lady Ronson shaver. We are the only company producing this. We have the only tools to produce it. When it is not produced, they don't produce shavers. The other two small parts again—I brought only small parts because of convenience. We do make parts up to five pounds in weight—there are also [491] individual jobs for television decorative work

which if not produced would result in no producing of that individual television set. In other words, what I am trying to say, the parts we make are for individual concerns of a specific nature. If I can't produce them, they cannot go out on the open market and buy them.

Q. You said something about tools. What do you mean by tools?

A. To produce parts that are decorative of this nature, first of all, you must have a molding die and in addition to that you must have finishing tools which may consist of shields, a special fixture—special fixtures of different types for plating, possibly stamping equipment. These particular tools are the sole property of the customer and not my company.

Q. Now recalling the time of the strike, did any of your customers remove their tools or molds from your plant in Erie?

A. Within forty-eight—

Mr. Davidson: I object. I have the same objection to this as I did to the prior witness.

Trial Examiner: I will over rule your objection. Go ahead.

The Witness: Within forty-eight hours of the start of the strike which brought it into about the third or fourth [492] of April one company removed two dies, General Electric of Utica, New York, removed two dies with the accompanying tools, finishing tools from our plant, yes.

Q. (*By Mr. Wayman*) Did the dies removed represent any substantial part of your production?

George Schau—Direct.

A. Yes, it was a substantial part of the production, and it was so important to the continuity of my customer that he took this action as rapidly as he did.

Q. Did you operate the plant, this division, during the strike?

A. We attempted to, yes, sir.

Q. Using the level of operations prior to the strike as one hundred per cent, can you express in terms of per cent the operations of the first month of the strike? That would be April.

A. Very roughly fifteen to twenty per cent.

Q. Would you do the same thing with the second month of the strike?

A. Maybe a little bit higher than that. Twenty-five per cent roughly.

Q. And the month of June up to the end of the strike?

A. Thirty-five to forty per cent.

Q. Did you at the time of the strike, the time it started, have a backlog of orders to fill?

A. Yes, we did.

[493] Q. Did you have any complaints from customers that you were not filling their orders?

A. The complaints, of course, were daily. A good deal of my time had to be spent on the telephone trying to answer these complaints which, naturally, are coming in every day under conditions of this kind.

Q. Did you make any replacement of employees in the plastic division?

A. Yes, we did.

Q. Will you tell us in your own words how you went about obtaining and assigning replacements?

A. This particular function was handled by the plant manager but I worked with him on the program and

also our personnel department. As we required, had openings and specific jobs to be done, this particular fact was conveyed to the personnel department who in turn provided people to take these jobs. At that time the people who came in replaced the youngest person on a given job classification that we were trying to fill.

Q. As of any given day during the strike, were you able to tell who had been replaced?

A. Yes, there was a daily record kept on that.

Q. Do you recall the twenty year seniority program that has been discussed in this hearing?

A. Yes, I do, sir.

[494] Did you ever tell the people who were at work in the plastics division of this twenty year program?

A. Yes, I did.

Q. Will you tell us when and under what circumstances?

A. The discussion of the plan which originated back on the 28th of May with the union resulted naturally in some rumors being very rampant throughout the plant and the corporation which was very common during those days, and we were questioned about it. At that time individual discussions were held with staff people and individuals in the plant. However, when the actual procedure was adopted and put on the board on June 15th at that time a meeting was held of all employees of the division in the main office that we have which is very large and could handle a whole group. At that time it was explained completely in detail as it was written.

Q. Were they told that it was in effect?

A. Yes, sir.

- Q. Did you come to work each day during the strike?
A. I attempted to come to work each day. There was a number of days I wasn't successful.
Q. What days were they?
A. April 2nd—

Mr. Davidson: I object.

Trial Examiner: I took the testimony from the other witness just for the purpose of showing whether or not he was [495] at the plant. I am going to be consistent, if in error, any how. So I will take the testimony from this witness.

Mr. Wayman: I will not pursue it in any great detail.

Trial Examiner: I assume this will be like Mr. Bertone.

Mr. Wayman: Yes.

The Witness: April 2nd, May 7th and on the date of May 8th I finally got in but at a later hour than the normal time.

- Q. (*By Mr. Wayman*) Will you tell us what you saw on those days?
A. On the 2nd of April and also the 7th of May, more particular the 7th of May, great numbers of people were in front of the entrance gates which prevented entry to the plant, beyond the control of the authorities.

Mr. Davidson: I will object to that. I think it is going beyond the question that was asked and I think it is going beyond the extent the Trial Examiner indicated he would take evidence.

George Schau—Direct.

Trial Examiner: Can I have the last answer read back?

(Answer read.)

Trial Examiner: It may stand.

- Q (By Mr. Wayman) Mr. Schau, did you attend negotiating meetings?
- A. Yes, sir, I did.
- Q. Do you recall in negotiating meetings representatives of [496] the company telling the union of mass picketing and violence and associating that with job assurance?
- A. Yes, that is a subject that was discussed a number of times.
- Q. Will you tell us as well as you can what you remember the subject of discussion was—the substance of the discussion, I am sorry.
- A. Well, the discussions, of course, took several directions as they naturally will when you meet as often and as long as we did. We were trying to point out at that time that we were unable to get people to come to work because of fear, both experienced at the gates of the plant, plus the phone calls that had been reported, plus personal threats which they had received, and the fact that we had given in our hiring of these people assurance of job security, which we felt—in fact I think we stated very carefully it would be a case they would not lose their job as a result of the settlement of the strike, that this was not a very tangible assurance to give the people, and we had to find something that they could actually understand and would really reassure them, that they would have their job.

- Q. You told this to the union?
- A. It was discussed many times.
- Q. Did you participate in any of the meetings in which the decision was made to either hire replacements or adopt [497] the twenty year plan?
- A. Yes, sir, to the best of my knowledge, all of the meetings.
- Q. Did you hear Mr. Shiolen testifiy to being in those meetings?
- A. I did.
- Q. Is your recollection of the meetings the same as his testimony?
- A. Yes, sir, it is.

Mr. Wayman: I have no more questions on direct.

Trial Examiner: All right, Mr. Fleischut.

Mr. Fleischut: Nothing.

Trial Examiner: You have any questions, Mr. Davidson?

Mr. Davidson: Yes.

CROSS EXAMINATION

- Q. (By Mr. Davidson) Mr. Schau, you stated as of any given day there was a daily record kept as to who was replaced. Who kept those records?
- A. That was handled by the plant manager, and my secretary who has handled personnel work and always has handled it. It was nothing new to her.
- Q. This was a separate type of record for the plastics division?
- A. Yes, sir.

Q. Now you stated you attended negotiating meetings at which certain reasons were stated to the union for superseniority. [498] Can you tell us when these meetings were held at which this was discussed?

A. Probably from the middle of May, on to finally culminating in a written procedure which we discussed but did not give to the union, as I recall it, on the 28th of May.

Q. You were telling them what you had in mind to do, is that correct?

A. That's correct, but we made the announcement specifically on the 28th.

Q. Were these meetings at which you stated to the union the specific reason which you recited why you had to give them reassurance—I think that was your word?

A. Yes, sir.

Q. And to whom did you state this?

A. These were stated in open meetings, to the best of my knowledge. It was no side-bar discussion.

Q. To whom?

A. Well, anybody that was at the meeting. Colella, Ed, and on down the list.

Q. Just generally to the group?

A. When you are discussing problems at a meeting, which I am not going to try to explain to you, because I am sure you are familiar with what they are like, you discuss many, many subjects and many facets of many subjects, and we were being asked as a result of our policy to bring in replacements how well we were making out in that type of thing, and it became [499] a matter of general discussion, as far as that goes.

- Q. And you said for these specific reasons during your general discussion, is that right?
- A. I would imagine we gave half a dozen more than that; maybe sixteen, maybe twenty. I don't know.
- Q. How about some of those other reasons?
- A. I have a very poor memory after one year, but I will do my best. I assume when people call us on the phone and say that "I am interested in coming to work but what's going to happen to me? Am I going to get fired tomorrow or something else," and you say to them no.
- Q. Did you state this to the union?
- A. We were discussing this, yes, the fear of people, because they were asking us the question.
- Q. That's one. Now what was the other reason, or reasons?
- A. There were people who were in the plant who we were not sure were going to come back the next day because of fear and who were saying "is it worth it to be slandered and possibly injured."
- Q. You stated this to the union as a reason?
- A. Oh, yes, sir, very definitely.
- Q. Very definitely.
- A. Yes, we were concerned about it.
- Q. Can you give us a definite instance of when you did?
- A. I can remember a definite case where we discussed some of [500] these and the union asked us if we could tell them who made these threats.
- Q. Who asked you that?
- A. If my memory serves me correctly it was either Collella or Bordonaro asked the question that if we could tell them who they were that was doing this type of thing they would be willing to talk to them.

Q. This is in connection with the discussion of super-seniority?

A. In connection with the threats to people and the general subject, yes.

Q. In connection with the general subject. Was this tied into superseniority?

A. I can't specifically say that.

Q. Do you remember what date this was?

A. I can't specifically tell you.

Q. What were some of the other reasons you gave?

A. In general, I can't answer that.

Q. Who was the spokesman for the company at these meetings?

A. Mr. Shiolen, Mr. Ferrell, Mr. Bertone and at that time Mr. Willis.

Q. They were present and participated in these discussions?

A. Yes, sir.

Q. Now let me direct your attention for a moment to the discussions of the meetings among the members of the company policy committee who determined to institute this. Do you [501] remember discussing the union security clause, the union shop provision of the contract in this connection?

A. Yes, sir.

Q. Can you tell us in what respect this was tied in?

A. Tied in with what?

Q. With the superseniority policy.

A. I don't know as there is a direct connection there. Certainly it is one of many facts that would have been considered in discussing the general subject.

Q. Discussing the necessity of giving the employees job assurance?

A. Yes, sir.

Q. Now I am having trouble understanding how this was one of the many facts.

A. I am having trouble understanding you, Mr. Davidson, what answer you want. I will do my best to give it to you.

Q. I want the answer that is the proper answer, whatever the discussion was.

A. Give me the proper question and I will give you the proper answer.

Q. What was said about the union security clause and the discussion of superseniority?

A. I can't answer because I am not sure what you are saying. I don't know. That is the key. You are making that the [502] key of the whole thing, and it is not. It was only one of a dozen approaches.

Q. Well, I am not making it the key. The question is it was stated by Mr. Shiolen this morning and I believe you confirmed it—let me ask you again was the union security provision discussed in connection with the discussion of the superseniority issue among the company management people who met together and decided on this policy?

A. Yes.

Q. Now can you tell me what the discussion was?

A. I think my recollection of that we were discussing the fact we had assured, given people assurance they would not lose their jobs as a result of the settlement of the strike, and under the union shop with present seniority system something would have to be done to supplement that assurance so that it would become a reality and not just a statement.

George Schau—Cross.

Q. Now let me ask you—

Mr. Wayman: Let him finish.

The Witness: You broke my train of thought.

Q. (*By Mr. Davidson*) You stated under the union shop something would have to be done. What was the problem created by the union shop that you were considering in this discussion?

A. I was not concerned about that but I know it came up and it has been testified as part of the general conversation, [503] and I agree it was part of the general conversation but it was not the thing, as far as I am personally concerned, that made us take action on this union security clause as you call it.

Q. You can't come up with any more that was said about it?

A. Not in that direct connection, no, sir.

Mr. Davidson: That's all.

Trial Examiner: Do you have any redirect?

Mr. Wayman: Just one question to straighten up this last answer that leaves me a little confused. I think you said union security. Did you mean in connection with the twenty year seniority?

The Witness: No I was merely repeating Mr. Davidson's comment of union security which was a new phrase to me. I am sure I interpreted it as a union shop.

Mr. Wayman: I have no further questions.

Trial Examiner: All right, you may step down.

(Witness excused.)

Mr. Wayman: Mr. Ferrell, will you retake the stand, please?

GORDON D. FERRELL, having been previously duly sworn on behalf of the Respondent, was recalled, examined and testified further as follows:

Trial Examiner: You have been sworn as a witness in this hearing and you are still under oath.

[504] *The Witness:* Yes, sir.

RE-DIRECT EXAMINATION

Q. (By Mr. Wayman) Mr. Ferrell, I am recalling you for a limited purpose. I would like for you to tell us whether or not in the course of negotiations you discussed with the union violence and mass picketing in connection with job assurance?

A. Yes, I think I said before when it became necessary for us to enlarge our production force, keep up with our orders, that we were forced to get more people in to do the work and we had to hire replacements. The union, in anticipation of this, because we had told them in the letter of May 3rd this was going to happen, had the mass demonstrations.

Mr. Davidson: I object.

Tl *Witness:* Just a minute. On May 7th and 8th—

Trial Examiner: Wait a minute, here. You don't rule on the objections. Is all of this that you are relating now occurring at some meeting with the union negotiating committee? Because that was the question asked.

Gordon D. Ferrell—Re-Cross.

Q. (*By Mr. Wayman*) Is this what you told the union? Just tell us what you told the union at these meetings?

A. We told the union in order to get people to come to work we had to give them some assurance their jobs would be more than temporary, and that they would not be laid off or lose their jobs as a result of the settlement of the strike.

[505] Q. Did you in any way mention the violence and picketing in connection with this?

A. Yes, we said that these people would not come in and take the abuse that they had to take coming to work and the threats they had to withstand in connection with coming to work and working under strike conditions without some assurance their jobs would not end when the strike was over.

Mr. Wayman: That's all the questions I have.

Trial Examiner: Mr. Fleischut?

Mr. Fleischut: Mr. Davidson wants to ask a few questions.

RE-CROSS EXAMINATION

Q. (*By Mr. Davidson*) Mr. Ferrell, do you have the notes you have been using all along for these meetings?

A. Yes.

Q. First, let me ask you at what meeting did you tell this to the union?

A. If I may have that chart.

Q. Can you tell us this without looking at your notes?

A. The first—I believe the meeting of May the 11th in which we first discussed the replacements, the replacement program.

Q. Did you tell them what you just stated you told the union at that meeting?

A. I would say we covered this subject.

Q. Covered what subject?

A. That I have just testified to.

[506] Q. What did you say at the May 11th meeting?

Mr. Wayman: Now, if you please, let's not go into everything.

Mr. Davidson: This is cross examination.

Mr. Wayman: He was recalled for a limited purpose.

Trial Examiner: I think you ought to limit it to a particular subject.

Mr. Davidson: To the particular subject with respect to the superseniority question.

Q. (By Mr. Davidson) What did you tell the union at the May 11th meeting?

A. I think we told them that we were giving assurance to our replacements that they would not lose their jobs and that under any contract that we would sign, this would involve some form of superseniority because of our large number of people on lay off, some four hundred fifty.

Q. You mentioned that?

A. Yes, sir.

Q. What else did you tell them? Is that the extent of what you informed them on May 11th?

A. I would say on May 11th, yes.

Q. When did you next go into this topic?

A. This was the subject of discussion practically every meeting we had from then on.

Q. Every meeting?

[507] A. Yes.

Q. What did you tell them at the next one, and what was your next one, your next meeting? You can refer to your list if you want to for convenience. What I want to know specifically is, Mr. Ferrell, at which meeting did you mention this alleged violence and mass picketing in connection with the superseniority issue?

A. This specifically I know was discussed at the meeting following May 28th, or if the meeting was on May 28th.

Q. At or on May 28th?

A. Yes, because at this time—

Q. What did you tell the union?

A. We did tell them about our twenty year policy.

Q. What did you say with respect to this particular topic, to the union, at that meeting?

A. We explained our procedure and our policy and what we were going to do in order to implement the job assurance we had given the people when they came to work.

Q. What mention did you make of the alleged violence and mass picketing at this meeting?

A. I think we probably did not make a specific reference to it at that meeting. Since you asked me to do this by memory I believe the meeting about which you are seeking comments would have been the meeting of May 11th.

Q. What other meeting?

[508] A. May 11th, specifically.

Q. And what other meeting? Any other meeting or was that the only one?

A. Specifically on May 11th we mentioned the violence on the picket line. We mentioned the threats and fines and so on which had been mentioned in the union's letter which had been mailed to these people who were working. We said for these reasons people were afraid and they had to have something more concrete in the way of job assurance, and at the same time—

Q. More concrete than what?

A. Than simply they would not lose their jobs. We withdrew union shop I believe on this meeting of May the 11th. The reason for this again was that we said we did not feel that these people should be required to become members of the union when they were being so abused by the union.

Q. Let's stick now to the issue of superseniority. What did you say? You said you had to give them more assurance. What did you say specifically to the union in this regard?

A. I don't recall anything further that was said that I haven't already said.

Q. Now at what other meeting did you connect these things, connect specifically this alleged mass picketing with the superseniority demand of the company?

A. It has already been testified to, Mr. Davidson. This [509] was a subject of discussion at all meetings. I can't pin it down to what was said at what meeting.

Q. What was said?

Trial Examiner: Let him finish. Go ahead.

The Witness: I have completed it.

Mr. Wayman: I don't think I heard it and maybe the reporter didn't.

The Witness: I said the subject of replacements was an issue right up until the end of the strike. There were many discussions concerning it and what was said specifically at each meeting I wouldn't pretend to tell you because I can't don't have it in detail and I cannot pin it down to what was said at what meeting.

Q. (*By Mr. Davidson*) Do you have the May 11th notes available?

A. Yes.

Q. Do you want to take a look at them, please. Do you have your handwritten notes also as well as those that are typed?

Mr. Wayman: May I submit that this is improper cross examination, when the witness testified without notes to cross examine him on notes that he didn't use.

Trial Examiner: He may use them to refresh his recollection.

Mr. Wayman: If he needs to.

[510] *Trial Examiner:* All parties have been using notes anyhow, so if he wishes he may do so.

Q. (*By Mr. Davidson*) You can check your typewritten notes first, if you want to.

Gordon D. Ferrell—Re-Cross.

Mr. Wayman: I guess I might as well go and look at the notes too.

Trial Examiner: Yes, you can join the huddle.

Q. (*By Mr. Davidson*) Can you tell us what, if anything, your notes state with respect to this discussion?

A. My notes simply state that some seniority agreement granting superseniority rights to all strikers who returned to work prior to the end of the strike.

Q. And that's all.

A. That's all.

Mr. Davidson: That's all.

Mr. Wayman: I have just one question. Mr. Ferrell, did you attempt to make verbatim notes of everything that was said about the subject at any of these meetings?

The Witness: No, sir.

Mr. Wayman: These were simply notes such as I am making on this pad, to remind you of things?

The Witness: Yes, sir.

Mr. Wayman: I will ask you this, Mr. Ferrell, do you remember a meeting on June 11th? Look at your notes and see if there was a meeting on June 11th?

[511] *The Witness:* Yes, there was a meeting on June 11th.

Mr. Wayman: I will ask you whether or not there was a discussion of general counsel's exhibit 6 at that meeting?

Gordon D. Ferrell—Re-Cross.

The Witness: Yes, sir.

Mr. Wayman: That's all.

Trial Examiner: Did you identify the letter as general counsel's exhibit 6?

Mr. Wayman: Yes, that is a letter dated June 10th.

Trial Examiner: Dated June 10th?

Mr. Wayman: That's right. Thank you, sir.

Trial Examiner: Do you have anything further?

Mr. Fleischut: Nothing.

Mr. Davidson: Nothing.

Trial Examiner: All right, you may step down.

(Witness excused.)

Mr. Wayman: May I have just a moment please off the record?

Trial Examiner: All right, you can have five minutes.

Mr. Wayman: Maybe we can bargain for eight.

Trial Examiner: We will take a five minute recess.

(Recess.)

Trial Examiner: On the record.

Mr. Wayman: May I offer the little plastic bag in evidence.

Trial Examiner: Yes, go ahead.

[512] *Mr. Wayman*: May I offer respondeent's exhibit 18, a bag of plastic parts.

Trial Examiner: I suppose your position is the same with respect to the sample kit?

Mr. Fleischut: As to the same kit, I have no objections in either case.

Mr. Davidson: I was the one that objected.

Trial Examiner: I will over rule your objection and received it in evidence.

(The article heretofore marked respondent's exhibit 18, for identification, was received in evidence.)

Mr. Fleischut: I would like to ask Mr. Ferrell a couple more questions.

Trial Examiner: All right, come around, Mr. Ferrell.

GORDON D. FERRELL resumed the stand, was examined and testified further as follows:

RE-CROSS EXAMINATION, Cont'd

Q. (*By Mr. Fleischut*) Is it now your position that throughout negotiations you stated to the union that you were granting superseniority because of mass picketing and/or violence?

A. This was not the moving or main reason, no, sir. The reason was to give job assurance.

[513] Q. My question was is it now your position that throughout negotiations you told the union at ne-

Gordon D. Ferrell—Re-Cross.

gotiating sessions you were granting superseniority because of mass picketing and violence?

Mr. Murphy: I think he has answered that question.

Mr. Fleischut: He was evasive. That's a yes or no question.

Trial Examiner: I thought he answered it but if you don't think he did, you may have another try at it?

The Witness: Was this the sole reason? No.

Q. (*By Mr. Fleischut*) Did you say this was a reason throughout negotiations?

A. This became an increasingly more important reason as the strike wore on.

Q. When did it become increasingly more important? More of a reason?

A. After May 7th and 8th, from there on.

Q. After that time?

A. Yes, sir.

Q. There was still mass picketing after the 8th?

A. There were still threats, still phone calls to employees, threatening them, letters received, damage to property and automobiles.

Q. There was mass picketing on the 7th?

A. Yes.

[514] Q. And on the 8th?

A. Yes.

Q. On any other days?

Mr. Murphy: Will you define mass picketing?

Mr. Fleischut: He knows what I am talking about.

The Witness: Not to the extent there was on the 7th and 8th.

- Q. (*By Mr. Fleischut*) Was there ever mass picketing on other days?
- A. There was more pickets than was supposed to be under the court order, the injunction.
- Q. What did the court order allow?

Trial Examiner: Oh, no, I am not going into that. This could just lead on and on and on and on. Now this witness has left the stand and he is being recalled, so let's keep it within reason.

- Q. (*By Mr. Fleischut*) Now let's get back to the proposition I started. Did you or did you not throughout negotiations say this was a reason for granting superseniority to the union committee?

Mr. Wayman: Granting superseniority to the union committee?

Mr. Fleischut: Strike that question.

- Q. (*By Mr. Fleischut*) Did you or did you not throughout negotiations tell the union committee the reason for the super- [515] seniority was because of violence or mass picketing?
- A. As the sole reason, no.
- Q. As any reason did you give that reason?

Mr. Murphy: What is the question, "the" or "a" reason?

- Q. (*By Mr. Fleischut*) As a reason?
- A. Throughout negotiations?
- Q. Yes.
- A. During negotiations?

Q. During negotiations?

A. Yes.

Q. And after May 11th did you regularly and consistently give violence and mass picketing as a reason for superseniority?

A. I don't think it was. I don't think it was continually repeated as a reason, no.

Q. How many times did you say it?

A. I don't know.

Q. Twenty times or a hundred times?

A. I don't know, Mr. Fleischut.

Q. But you did give that reason?

A. Yes, more than once, and on many times.

Q. On how many days?

A. I don't know how many days.

Q. According to an exhibit referred to here as general counsel's exhibit number 2 May 11th was the thirty-five meeting, and we go up through fifty some, fifty-two; roughly, [516] thirty-one from fifty-two is twenty-one. There were approximately twenty-one regular negotiating sessions during that period of time, isn't that correct?

A. That is correct.

Q. Now how many of these twenty-one meetings did you tell the union that mass picketing or violence was a reason for granting superseniority?

Mr. Murphy: I will object to the question. He has answered it three times, he does not know how many meetings. There was more than one.

Trial Examiner: This is cross examination. I will over rule the objection. Go ahead. You may answer.

Gordon D. Ferrell—Re-Cross.

The Witness: I say the same thing I said before. I don't know at how many different meetings.

Q. (*By Mr. Fleischut*) Did you say that at as many as half the meetings?

A. I am sure this was referred to in our conversations without specifically saying these are the reasons every time.

Q. Did you ever say because of mass picketing we are granting superseniority?

A. Per se, no.

Q. Or words to that effect?

A. All by themselves, no.

Q. Then you really didn't say that, is that correct?

A. As one of the number of reasons we did say it and it was [517] discussed, and it was included in discussions.

Q. Now on direct examination earlier this week you said superseniority was given in order to promise permanent replacements—replacement permanent tenure, is that correct?

A. That is correct.

Q. In order they would not be laid off as a result of the ending of the strike?

A. That is correct.

Q. And now you are saying in addition to that you said it was because of mass picketing and violence is that correct?

A. This became another reason.

Q. But you actually stated—

A. The primary reason was the one I gave you and the one I testified to, was to give jobs, job assurance.

Q. Throughout these twenty-one meetings after the 11th you stated that as a reason is that correct?

Gordon D. Ferrell—Re-Cross.

Trial Examiner: No. that's not his testimony at all.

Mr. Fleischut: That is incorrect. You only said it on May 11th?

Mr. Murphy: Just a moment. I object to this sort of actually trap-type question. The testimony has been very clear he said it at some of these meetings. How many, he doesn't remember.

Mr. Fleischut: First you say on all of them, and now [518] you say on none of them. The answer has been something different.

Q. (*By Mr. Fleischut*) State it in your own words, Mr. Ferrell.

Mr. Murphy: May I ask what he is supposed to state?

Trial Examiner: Suppose you give him the question.

Q. (*By Mr. Fleischut*) How frequently during the negotiations after May 11th did you tell the union committee that you were granting superseniority because of mass picketing or violence?

A. We never made that statement all by itself, naked like that.

Q. You never made that statement?

A. No, sir, not like that.

Q. Did you ever make a statement to that effect?

A. As a secondary—as a secondary reason to the primary reason which was to give job assurance, yes, but we never changed our position on the primary reason.

Gordon D. Ferrell—Re-Cross.

Q. The primary reason was to give job assurance?

A. Yes.

Q. And the mass picketing really wasn't the cause of it at all, is that correct?

Trial Examiner: I don't know—you have been using the term mass picketing and violence. Actually the testimony of the witness was they were having difficulty getting replacements to come to work because they were being abused coming [519] through the picket line. If you want to cite his testimony, cite it with some accuracy. Seemingly there was no mass picketing after May 11th or May 8th.

Mr. Murphy: It depends on the definition of mass picketing. There was illegal picketing after that date.

Trial Examiner: Oh, well—

Mr. Fleischut: Nothing further.

Trial Examiner: Do you have anything further?

Mr. Wayman: No, not of Mr. Ferrell.

Trial Examiner: Mr. Davidson?

Mr. Davidson: No further questions.

Trial Examiner: All right, Mr. Ferrell, you may be excused.

(Witness excused.)

[520] *Mr. Murphy:* Mr. Puyalie.

Dominic Puyalie—Direct.

DOMINIC PUYALIE a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner: Will you state your name for the record, please?

The Witness: Dominic Puyalie.

Trial Examiner: Where do you live?

The Witness: 3803 Tuttle Avenue, in Erie, Pennsylvania.

DIRECT EXAMINATION

Q. (*By Mr. Murphy*) Mr. Puyalie, what is your position with Erie Resistor?

A. I am an operation manager in the tubular capacity department in Erie Electronics Division.

Q. How long have you held that position?

A. Approximately three years.

Q. You were an operation manager, then, during the strike?

A. Yes, I was.

Q. How big is the department of which you are the operation manager?

A. It's approximately three hundred twenty-five to a hundred and forty—maybe a hundred and fifty. It varies at times.

Q. Did you operate or attempt to operate during the strike of 1959?

A. Yes, we did attempt to operate, and we operated somewhat, [521] the best we could.

Dominic Puyalie—Direct.

Q. What are the duties of an operation manager in the department—in a department such as yours?

A. Well, the prime duty of an operation manager is to manage and supervise the making and producing of parts that we hope to sell to customers. We also maintain personnel contact and instruction of people to produce a job well, harmony in the department, schedule and make plans for more orders.

Q. You are then in close contact with sales and orders, so far as your department is concerned?

A. Very definitely.

Q. During the strike of 1959 did your department lose any orders?

A. We lost a lot of orders.

Q. Do you want to describe that, how it came about?

A. It was very difficult. We didn't have enough people to operate, and of course we, as salaried people, did all we could ourselves in producing parts, but we couldn't produce enough. We had orders and orders were available to get, but because we weren't delivering fast enough, soon enough, cancellations came in, and they came in continuously throughout the strike.

Q. Were there any employees in your department who were permanently replaced during the strike?

A. Yes, there were. There were many of them.

Q. Were you able, sir, on any specific date, to tell exactly [522] who had been replaced in your department?

A. Every single day, from the point that the strike started until it ended, we kept a record—a running record—knowing of every person that we had on the job prior to the strike and knowing of every person that came into the department, either a returnee or a new hiree, we knew when, and who they were.

Dominic Puyalie—Direct.

Q. I will show you General Counsel's Exhibit 12—no.

Mr. Wayman: It is still 12.

Q. (*By Mr. Murphy*) —entitled "Replacement Policy and Procedure, May 27th"—and ask you if you have seen that document before?

A. Yes. I have. This is the general policy that was issued, and we read it and we followed it.

Mr. Murphy: May we have this marked as Respondent's 19?

(Thereupon, a document was marked Respondent's Exhibit No. 19 for identification.)

Q. (*By Mr. Murphy*) Mr. Puyalie, I show you what has been marked for identification as Respondent's Exhibit 19, and ask you what it is.

A. This is a list of all the people that worked in the tubular capacity department prior to the strike, their name, their clock number, their job classification, and their seniority date, and it also is—

Q. Before you go into what it also is, in what order are they [523] listed?

A. In seniority order and job number grouping.

Q. What else is on that list?

A. Also you will find on the list we show alongside of each person a history of what happened during the time of the strike. It shows the people who have come in, on the date that they have come in, and who they replaced.

Q. All right, when was the typewritten part of this list—which appears to be the names, seniority dates and so on of employees as of March 31, 1959—when was that typewritten part prepared?

Dominic Puyalie—Direct.

A. The typewritten part was prepared just about on March 31st, just prior to the strike, the typewritten part.

Q. What about the part which seems to be in pen and ink on the righthand side?

A. This was a continuous daily function. As people came in, whether they were new hirees or returned from strike, we placed their name next to the person they replaced, wherever they fit. This was written in ink because the action was constantly changing and it was difficult to typewrite the names in.

Q. Now, as an employee came in, then, as I understand it, and became a replacement, his name was marked in ink opposite the name of the person who was replaced?

A. That is right, exactly.

Q. And in whose handwriting are these pen and ink names?

[524] A. Most of it is mine. There were times, of course, I wasn't at the plant, and so the foreman in the particular department where the new person came in or the employee came in filled it in for me.

Q. And on what day, for example, would the foreman or yourself write the name of the replacement on this list?

A. On the day that the employee came into the department.

Mr. Murphy: Would you mark this list as Respondent's Exhibit 20 for purposes of identification.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 20 for identification.)

Q. (*By Mr. Murphy*) Now, sir, I hand you what has been marked as Respondent's Exhibit 20 for purposes of identification, and ask you what that list is?

A. This is a recap list of the daily list we kept, showing the replaced people and who had filled their jobs. It is a complete total recap. This does not include any other people but the replaced people and the people who had taken their jobs.

Q. When was this list prepared?

A. This was prepared at a very late date. In other words, the activity was happening every day throughout the strike, so that nearly at the end of the strike or practically at the end of the strike this list was prepared by the personnel department.

Q. To whom was it given?

[525] A. It was given to Ray Bertone.

Q. I notice that the last name on the list of replaced people in Department 1 is J. Luback, and I also notice the name of J. Luback does not appear in General Counsel's Exhibit 32 as a person replaced, nor on General Counsel's Exhibit Number 30, being the replacement list of July 6th. Can you explain what happened to Mr. Luback? Why he appears on your list but was not on the later list?

A. Well, this was really an error on our part. When we did get a man in to fill a job that was supposedly the job that Jack Luback had, we actually found it was an error. Jack Luback had been on a leave-of-absence. He had been on a sick leave, and therefore he was not replaced, so we used the man that was to replace Jack—or his job—and we put him on another job, and this caused another replacement, of course.

Dominic Puyalie—Direct.

Mr. Murphy: Now, if it please the Trial Examiner, we have come to a point where I would like to explain to you and to the General Counsel—make an offer of proof, I suppose—in view of your earlier rulings in this hearing.

I would like to offer to prove, through this witness, that because of the general conditions prevailing at the plant on the picket line, both coming into the plant in the morning and leaving at the end of their respective shifts, that because of the reports throughout the plant of threatening phone calls, because of the people, working employees, who had had their [526] cars damaged by stones through the windows, by paint being sprayed on them, by sugar in the gas tanks, because of people who had had their homes splattered with paint, their home windows broken, in some instances fires started, that there was an atmosphere of fear and apprehension throughout the plant, throughout the electronics division with which this witness is familiar; that each morning it took a period of time after the people came in the plant to get them settled down, some actually having to be allowed to lay down, rest; that there was equally a great apprehension in the late afternoon just before they had to go out again at quitting time; that this condition continued throughout the strike up until the final day; that it was a tremendous effort on the part of this witness—this witness and others—to convince the employees, once they came in, that they should continue to come into the plant and come back to work the next day, every day, actually, as it worked out; and that had it not

been for the fact that these employees had an assurance and a promise that they would have sufficient seniority to keep them employed and working after all of this was over with, after the strike was done, the task of Management in encouraging these folks day after day would have been an impossible one, and we would not have been able to maintain our work force.

I propose to prove that through this witness, and I will make a similar offer of proof with other ones later.

[527] *Mr. Davidson*: I object.

Mr. Murphy: Go ahead and object, and I will state my reasons why it is offered.

Mr. Davidson: I object. This is not an offer to prove facts, because of this and because of that and because of something else, and then had it not been for something stated the employees' minds would have been something else. I think if Mr. Murphy wants to make an offer to prove facts, as to what happened, this is one thing; but I have never yet seen an offer of proof stated in this form.

Mr. Murphy: May I state I would be perfectly willing to prove all of these facts, prove whose car got damaged, whose apartment got burned, and whose this and whose that, but we would be here for three weeks, and I don't think that is important.

Mr. Davidson: You are making an offer of proof now.

Mr. Murphy: The offer of proof is to show they had this fear and apprehension in the plant, and it

Dominic Puyalie—Direct.

was necessary to do something to keep these people coming back to work, and they would not have come back to work without the assurance which eventually became the twenty-year plan.

Trial Examiner: I will accept the offer of proof from you along that line, but I do think you have also entwined much argument in what you have already stated. I didn't take that to be your actual offer of proof, but perhaps an argument in [528] support of your contention.

Mr. Murphy: This witness will testify to each of those things, if allowed to.

Now, may I give you my reasons why I think this is not only relevant but absolutely necessary in view of the Board's decisions and Court decisions?

Trial Examiner: I will accept the prior statement as an offer of proof, and it is rejected. I think maybe you had better wait until the end of the testimony before arguing it.

Mr. Davidson: I would like an exception noted to this. I realize it has been rejected, but I object to it as even consisting of an offer.

Trial Examiner: You don't think it is even good as an offer of proof?

Mr. Davidson: That's right.

Trial Examiner: I will consider that an offer of proof and reject it.

Mr. Murphy: While the witness is still on the stand, and before he is dismissed may I ask the

Dominic Puyalie—Direct.

Trial Examiner—you stated that you would like argument later, and what I meant was legal argument as to why this was relevant. You still wish that postponed?

Trial Examiner: Yes, you can save that for your final argument, either oral argument or on a brief.

[529] **Mr. Murphy**: In other words, the argument will not persuade, regardless of what it is, the Trial Examiner to change his ruling?

Trial Examiner: I have already made my ruling on that, and I will have to be consistent, and, as I have already stated, I don't think this is an issue under the pleadings. I think your rights are amply protected with the offer of proof.

Mr. Murphy: Then, while we are making offers of proof, I'd like to have this marked.

(Thereupon, a document was marked Respondent's Exhibit No. 21 for identification.)

Mr. Murphy: I would like to offer in evidence Respondent's Exhibit 21, either in and of itself or, if necessary, through the prothonotary of the Court of Common Pleas of Erie County. I will make an offer to present this in evidence through the prothonotary of the Court of Common Pleas in Erie County, who will testify this is a true and correct copy of a complaint in equity filed by the Erie Resistor Corporation against the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 613 of IUE, and the several named officers of that local, as well as Charles Copeland and

Joseph Considine, officers representing the International; the sheriff's return, showing service on the defendants; the order of the Court of Common Pleas granted pursuant to the Complaint in Equity, being [530] an injunction against mass picketing, granted by Judge Burton R. Laub on the second day of April, 1959; consisting further of a stipulation of counsel entered into by myself as attorney for the plaintiffs; by James G. Hanes, attorney for all of the defendants; providing that a further order of Court could be entered; a certified copy of that further order of Court dated the 11th of April, 1959, which specifically limited the number of pickets at each door and gate of the plaintiff's plant; the plaintiffs in this equity case, the respondents in the present case.

Further pleading entitled "A petition to compel compliance with the orders of Court dated April 2nd and April 11th,"; and an order to show cause, signed by Judge Laub on April 14th; a Motion for immediate hearing the 7th day of May, 1959; and, lastly, opinion of Judge Laub, and Order, dated June 13, adjudging the local union and several of its officers to be in contempt of the earlier orders of Court, fining two of those officers and fining the local union.

I would offer to prove that document being a certified copy of the records of the Court of Common Pleas, and do so through the prothonotary of Erie County.

Mr. Davidson: Objected to on the same basis.

Dominic Puyalie—Direct.

Trial Examiner: You are offering this now, Mr. Murphy?

Mr. Murphy: I would like to offer it now, sir, with the understanding if the offer is accepted, and other counsel [531] insist, we will call the prothonotary himself to say this is a certified copy.

Trial Examiner: I presume there is no question of authenticity?

Mr. Fleischut: No.

Trial Examiner: I don't think this is material to the issues here. I will reject the exhibit, and it may go in the rejected-exhibit file, and since it is a rather lengthy document I will not require you to file two copies of this.

(The document heretofore marked Respondent's Exhibit No. 21 for identification was rejected.)

Trial Examiner: By the way, you have not offered Respondent's Exhibits 19 and 20 in evidence.

Mr. Murphy: I will do so now.

Trial Examiner: Any objection to those lists?

Mr. Fleischut: None.

Trial Examiner: Those exhibits may be received in evidence and marked as Respondent's Exhibits Numbers 19 and 20.

(The documents heretofore marked Respondent's Exhibits Nos. 19 and 20 for identification were received in evidence.)

Dominic Puyalie—Direct.

Mr. Murphy: I would like to make a further offer. I would like to have this marked as Respondent's Exhibit 22.

(Thereupon, a document was marked Respondent's Exhibit No. 22 for identification.)

[532] *Mr. Murphy:* And Respondent's Exhibit 23.

(Thereupon, a document was marked Respondent's Exhibit No. 23 for identification.)

Mr. Murphy: I would like to offer in evidence and ask the National Labor Relations Board to take judicial notice of the respondent's exhibit 22, being an order of the National Labor Relations Board—decision and order of the National Labor Relations Board—dated November 4th, concerning the violence and mass picketing at the plant of Erie Resistor during the period in question, and Respondent's Exhibit 23, being a petition of the National Labor Relations Board to the Court of Appeals, United States Court of Appeals, to the Third Circuit, asking for enforcements of Respondent's Exhibit 22, and the Board's Case Number was 6-CB-603.

Trial Examiner: Is that a reported case? What is the NLRB number?

Mr. Davidson: It is not reported.

Trial Examiner: Unreported?

Mr. Davidson: This is a consent decree upon stipulation, and I think the stipulation did not admit liability or the facts. There is an additional document that should be attached to this.

Dominic Puyalie—Direct.

Mr. Fleischut: I would object to this on the grounds that we have also dealt with these problems of violence so far and I concur with counsel that, if admitted—or placed in the rejected [533] exhibit file—in any event, it must be accompanied with a stipulation in the same case.

Mr. Murphy: I would have no objection to that stipulation being added, and would broaden my offer to include the entire Board records in the case. I do not have a copy, at least with me, of that stipulation. I assume I have one some place.

Trial Examiner: Was that an order entered on stipulation?

Mr. Fleischut: Yes, sir. The point being that in paragraph 8 of that stipulation it is indicated the signing and execution of the stipulation does not constitute an admission of violation, and although I believe the entire case should be rejected, the stipulation should accompany the Respondent's Exhibit 22, no matter what its disposition.

Trial Examiner: Well, it is part of the Board's official records, and it is a Board decision, being on stipulation or otherwise, so — the action just referred to, I can take judicial notice of it—and in view of that fact I will receive these documents in evidence as Respondent's Exhibits 22 and 23.

(The documents heretofore marked Respondent's Exhibits Nos. 22 and 23 for identification were received in evidence.)

Mr. Davidson: May I state one further objection to it?

Dominic Puyalie—Direct.

Trial Examiner: It won't do you any good, but go ahead and state it.

[534] *Mr. Davidson:* The charging party is not a party to this case.

Mr. Fleischut: This—it is my understanding the Trial Examiner will take judicial notice of the attached stipulation, although it does not accompany the Respondent's—

Mr. Murphy: If you have a copy, attach it.

Mr. Wayman: We will makes copies.

Mr. Fleischut: May it be submitted as an attachment to Respondent's Exhibit 23?

Trial Examiner: All right. Be sure^d you do that, and at the close of the hearing the reporter can turn it over to you and you can supply the stipulation.

Mr. Fleischut: Further noting the respondent here is not a party in the CB case.

Mr. Wayman: The records themselves show who is a party.

Mr. Fleischut: The charging party.

Mr. Murphy: Except to the effect the charging party is a constituent part of the charged party in that case. I don't think that will be denied, will it?

Mr. Fleischut: I don't think that is contained in the body of the agreement.

Mr. Murphy: Is there any^d doubt about it? You may cross examine this witness.

CROSS EXAMINATION

Q. (By Mr. Davidson) Is your department within the elec- [535] tronics division?

A. Yes, it is.

Q. I wonder if you can identify this for me, please?

A. This is the Erie Electronics—

Mr. Wayman: He may be able to identify it, but I can't hear what you are saying. Is it something about an exhibit? Has it been marked?

Mr. Davidson: No. We will mark it as Charging Party's Exhibit 5.

(Thereupon, the document above referred to was marked Charging Party's Exhibit No. 5 for identification.)

Q. (By Mr. Davidson) Can you identify that for us, please?

A. It is the Erie Electronics News issue of Friday, August 28th, 1959.

Q. You recognize it as an issue you saw at that time?

A. Yes, I do.

Q. Will you tell us what the distribution of that is?

A. To my knowledge—I am not exactly sure. As a matter of fact, I don't know that I can tell you because I don't distribute these. I don't have anything to do with it. I get a copy, myself.

Q. Is it distributed in the plant?

A. Yes. Every employee in the plant, in the electronics division, gets a copy.

Q. This is distributed by the company?

[536] A. The Erie Electronics Division.

Q. Of Erie Resistor?

A. Yes.

Mr. Davidson: Unless Mr. Wayman objects to offering this through his witness, I would like to offer it.

Mr. Murphy: May we ask what relevance it has?

Mr. Davidson: The testimony has been given as to the impact of the strike on the company's operations. This document, which is a company document, is relevant to that issue.

Mr. Murphy: In what particular, sir? This document talks about the pension plan.

Mr. Davidson: On page 1.

Mr. Murphy: This part that is underlined?

Mr. Davidson: I don't know if it is underlined or not.

Mr. Murphy: May I ask Mr. Davidson if he is referring to the consolidated balance sheet of the corporation?

Mr. Davidson: I am referring to the entire article.

Mr. Murphy: I'm afraid I will have to object as to the purpose offered unless you are more specific. For example, there is a statement as to the consolidated balance sheet, and includes plants in England, Canada and every place else, and has nothing to do with the strike whatsoever. If there is some specific purpose that shows it's relevant I will be happy to agree to it.

Dominic Puyalic—Cross.

Trial Examiner: What's the date of that paper?

[537] *Mr. Davidson:* August 28, 1959, approximately one month after the termination of this strike.

Mr. Murphy: Approximately two months.

Mr. Davidson: One month after the signing of the contract and two months after the termination of the strike, and it has an article based on the August 7th interim report to the shareholders of the Erie Resistor Corporation, stating its savings—

Mr. Murphy: I will object to anything on the interim report to the shareholders. It really deals with many, many plants. I will object unless there is something specifically referring to this plant.

Mr. Davidson: It states also during the strike as much work as possible was transferred to the company's other plants in this country and in Canada, and, as a result, these plants operated at increased levels while the struck plants kept operating on a partial basis.

Mr. Murphy: We will stipulate that that sentence is true,

Mr. Davidson: It also states that the sales of the company during the first twenty-four weeks amounted to \$10,579,110 as compared to sales of \$9,384,450 for the same period in 1958.

Mr. Murphy: This is completely irrelevant.

Trial Examiner: I don't see where that has any bearing. Do you want to accept counsel's stipulation concerning the reduced production at the struck plants?

Dominic Puyalie—Cross.

[538] *Mr. Davidson:* I'd be happy to accept that stipulation, but I see no reason why they should not go into evidence in addition.

Trial Examiner: I don't see where it has any bearing at all on this. It's two months after the strike.

Mr. Davidson: It's for the first six months, I believe. Covering the first twenty-four weeks of 1959, which I think takes us right through the period to which the contract was signed.

Trial Examiner: I am still not impressed. Counsel offers to stipulate the point you read; if it has any pertinency at all in this case, and you have accepted that stipulation so I will reject it.

Mr. Davidson: Can I have this placed in the rejected file also, please?

Trial Examiner: Yes. You may put it in the rejected file.

(The document heretofore marked Charging Party's Exhibit No. 5 for identification was rejected.)

Q. (By *Mr. Davidson*) With respect to Respondent's Exhibit—the first document that was offered through you—setting forth a list of employees, with the handwritten notes on it—can you tell us what the asterisks stand for next to the job numbers in the first column?

Mr. Wayman: Could we straighten out that number?

[539] *Trial Examiner:* It is number 19.

Dominic Puyalie—Cross.

Mr. Murphy: May I state prior to that copy given you was put together after being photostated in reverse order. This is actually the first page, and there is a legend on it that will help you.

Q. (*By Mr. Davidson*) It helps a little bit. Can you still tell us for the record—it is pretty hard to read on this—can you tell us what the asterisks stand for?

A. I can read it for you on this copy. The "X" designates people replaced. The star designates people not replaced. And the check mark designates people returned.

Q. That's returned prior to the end of the strike?

A. That's right.

Q. The asterisk, I take it, appears next to column one? All of those marks are an asterisk?

A. Yes.

Q. And the check marks are next to names? I am confused. I am sorry. On the first page, about the middle, is the name of F. Daley. There is a mark next to that name. Is that an asterisk or a check mark or a cross?

A. Are you referring to number 141, F. Daley?

Q. 141, that's right. Clock number, I assume?

A. I don't see that on here.

Mr. Murphy: May we go off the record a moment?

Trial Examiner: Off the record.

[540] (*Discussion off the record.*)

Trial Examiner: On the record.

Dominic Puyalie—Cross.

- Q. (*By Mr. Davidson*) The mark next to F. Daley, 141, on the middle of the page.
- A. Yes. That's to designate people not replaced.
- Q. When were those marks put on?
- A. Those were in the recap time. We naturally have to make this long list to give to Mr. Bertone. We had a difficult situation, so we put asterisks and check marks and "X" marks so it could be designated on another sheet.
- Q. All of these marks were put on at the end of the strike, is that correct?
- A. The marks, yes. I would say most all. There may have been some that have been put on during the time that the posting came on.
- Q. Did you put them on or did someone else?
- A. It was between myself and the foreman in recap-ping this thing.
- Q. Would you look at the one the third from the bottom? D. Kenzora, Number 19, and in the margin next to the first column, under "Job No.", is 320, and is that a star?
- A. That is the previous check mark we put on this sheet when we were counting people that were replaced, and of course—
- Q. Excuse me. Go ahead.
- A. Afterwards, in the recap, we had to make another mark so [541] we could signify our proper count and our proper posting.
- Q. Which are the marks that count there? The ones out in that margin next to the job number, are they earlier marks that were crossed off at the end?
- A. The recap marks are the ones—something meaning something very positive—and that is, as I explained,

Dominic Puyalie—Cross.

the "X" mark designates people replaced, the star represents people not replaced, and the check mark designates people returned.

Q. Those marks are all to the right of the name of the employee, is that correct?

A. Right.

Q. And the other marks to the left of the name or to the left of the job number are prior marks and are crossed out?

A. Yes, I would say most of them may be. I don't know if some of them might have been put on the same day that one of the "X" marks were put on.

Q. Now, on this J. Luback, whose job is circled—530—is says "on sick leave" and "do not replace". When were those words written on this document?

A. I do not recall that exactly. We had, as I mentioned before, we had made an error when we got a new employee in. He was to replace a given job that we had, and Jack Luback was on it, and so naturally we marked our list to replace. We put an asterisk along the lefthand side, you note, but it was later found that this man was on sick leave, and we were [542] not going to replace this particular man.

Q. These words were probably put on here then sometime after the termination of the strike?

A. Oh, no. No.

Q. Sometime after he was replaced?

A. Yes, that's true, but not after the termination. We decided this, maybe, a short time afterwards. I don't know the date.

Q. What did you do with Mr. Mulhalczick's name? His name appears as the man who replaced Luback.

A. I can't tell you from this sheet. I would have to refer to another sheet here, the previous sheet that we saw. Even this was the recap, in error, on John Mulhalczik.

Q. Can you tell me the date of the first sheet you are looking at, next to his name? Mulhalczik?

A. 6/24/59.

Q. What does that day represent?

A. This was the day that John Mulhalczik came to work for the company.

Q. That's the day the name was written on the list?

A. Right.

Q. Were there other cases on which it was discovered that employees had been replaced who were on sick leave or other types of leaves-of-absence?

A. No. not in the tubular capacity department. I think that [543] was the only misplacing there.

Q. Were there any other errors on this list discovered in the course of recapping or subsequent thereto?

A. Not that I know of, no.

Q. I take it none of this information was transmitted to Mr. Bertone until after the termination of the strike?

A. Oh, no, that's not true.

Q. When was it transmitted to him?

A. Well, maybe in sum after the termination of the strike it might have been, but he was in constant touch with this, and other people, too.

Q. How did you transmit the information to him?

A. Well, we gave him a copy, a summarized copy, similar to the one you have seen.

Q. At the end of the strike?

A. This is one way, but daily when he approached us we also gave him information.

Dominic Puyalie—Cross.

Q. You gave him no written reports?

A. Not at all times. There may have been sometimes that he wanted a listing of people's names. We had it, of course, on this sheet.

Q. And the second list, I take it, represents nothing more than a transference of the information on the first list?

A. That's right.

Mr. Davidson: That's all.

[544] *Trial Examiner:* Do you have any questions?

Mr Fleischut: Not of this witness.

Trial Examiner: Any redirect, Mr. Murphy?

Mr. Murphy: No, sir.

Trial Examiner: You may step down.

(Witness excused.)

HORACE S. HERRICK a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner: State your name.

The Witness: Horace S. Herrick.

Trial Examiner: Where do you live?

The Witness: 205 Marshall Drive, Erie, Pennsylvania.

DIRECT EXAMINATION

Q. (*By Mr. Murphy*) Mr. Herrick, were you employed by Erie Resistor Corporation during the strike in 1959?

A. I was.

Q. In what capacity?

A. I served as Assistant General Manager, Erie Electronics Division, reporting to Mr. Shiolen.

Q. What was your responsibility?

A. Direct responsibility, material control, customer service, custom engineering.

Q. Will you speak up?

A. Most activities except manufacturing, and during the strike [545] some manufacturing was my responsibility, and it was my duty to see the customer's needs were taken care of as well as possible, to prevent especially the company losing certain customers; that is, irrevocably. This was a great danger throughout the entire period of trouble, to see there was material available, when needed, to produce these important orders, to see that operations, jobs,

Horace S. Herrick—Direct.

were staffed as well as possible to produce the materials we had to. I did all of this through working with the operation managers and various department heads.

Mr. Shiolenos also did this. I did this in his absence, and sometimes we did this together. We would be required to make daily rounds through the plant to see which jobs and operations were functioning, where there were shortages of people—that is, where there were jobs unfilled that we had expected to be filled—and, in doing this, I had occasion to work very closely with the operation managers. I also had occasion to work very closely with the foremen and to talk with the actual working staff in the plant.

Q. You heard the prior witness describe Respondent's Exhibit 22? Excuse me. Exhibit 19, did you? Respondent's 19? His list of his department by seniority?

A. I did.

Q. I will ask you what records were kept by the other operation managers.

[546] A. At any time I found every operation manager knew exactly who was working in his area, whether the employee was a replacement employee, and, if so, who that replacement employee had replaced. I found, in almost every case, written records were kept of this either on sheets of paper or in card files. The only exception to this may have been a department where only one or two workers were involved, a very small service section.

Horace S. Herrick—Direct.

- Q. In other words, did all of the other department heads have records similar in nature to Respondent's Exhibit 19?
- A. They did.
- Q. On any given day could you, as assistant division manager, have stated exactly who had been replaced and by whom?
- A. In a very short time we could have recapped the situation for the whole division, yes.
- Q. What would you have had to have done to have got that specific information?
- A. Simply called on the various operation managers, department heads, and put that list all together into one list.

Mr. Murphy: All right, at this point I would like to make a further offer of proof, through this witness, to be on the record.

Trial Examiner: Is this in connection with acts of violence?

Mr. Murphy: Not the specific acts of violence, but what effect these acts of violence had upon the people in the plant.

[547] *Trial Examiner:* Do you want to make your offer through the witness?

Mr. Murphy: I'd like to make an offer as to what he would testify to if allowed to so testify.

Mr. Davidson: I don't think the last offer was ever tied in to the witness on the stand.

Trial Examiner: There is no question in my mind about it.

Horace S. Herrick—Direct.

Mr. Murphy: No question it was tied in or was not tied in?

Trial Examiner: It was tied in.

Mr. Murphy: I'd like to make an offer of somewhat similar nature, as to what this witness will testify to, if allowed.

Trial Examiner: All right, you may make your offer of proof in line with my ruling that I will not take any testimony concerning picket-line misconduct or acts of violence:

Mr. Murphy: Specifically.

Trial Examiner: In line with my ruling, you may make an offer of proof as to what this witness would testify to had the objection not been sustained.

Mr. Murphy: For the record, I should like to offer to prove by this witness that in line with his duties as assistant division manager it was his responsibility to tour the plant, to talk with the employees, to do his best to keep their morale [548] up; that at the beginning of every work day there were always large groups of employees—at least after replacements started coming in—who were so shaken by the experience of coming into the plant that they could not be assigned to work for periods ranging from fifteen minutes to an hour. It was almost a daily occurrence to have to allow some of these employees—particularly the women—to sit down or lay down, rest; and that the employees were also daily in fear and apprehension of leaving the plant at night.

Horace S. Herrick—Direct.

Mr. Davidson: I object. I don't understand how this witness or the other one could testify as to the state of mind of the employees under him. He can offer to prove what this witness observed, but certainly not what was going on inside their minds.

Mr. Murphy: I would suggest to the Trial Examiner this witness can observe fear and hesitancy.

Trial Examiner: I will agree he couldn't go into the state of mind of any individual. Of course if there were any complaints from these individuals or statements by them it would be a different thing.

Mr. Murphy: Continuing, then, I offer to prove through this witness that large numbers of the employees continually complained to him as to events transpiring at their homes after they left work, such as threatening phone calls, damage to vehicles and homes. They constantly complained to him concerning the problem of coming in and out through the picket line, and that because of this it was one of his duties to do his best to insure these employees would continue to come in day after day and withstand and overcome their complaints, and that it is his opinion—from his own observation and complaints coming to him from these employees.

Mr. Davidson: I object to his opinion.

Trial Examiner: Overruled.

Mr. Murphy: That without a seniority system which would guarantee the employees continued employment after the end of the strike, it would have

Horace S. Herrick—Direct.

been impossible to keep large groups of them coming back day after day.

That's the extent of my offer.

Trial Examiner: That concludes your offer?

Mr. Murphy: Yes.

Mr. Davidson: I would hope that counsel for the Respondent would remember that an offer of proof is supposed to be a good-faith offer of what he can prove through a witness. I think these last two offers have been so obviously speeches and argumentative that he couldn't possibly hope to prove them through this witness or any other witness.

Mr. Murphy: I'd like to put that to a test and let this counsel see whether we can prove it or not.

Mr. Davidson: Not on this record or any other.

Mr. Murphy: You seem to be afraid that we can prove the [550] statement.

Mr. Davidson: I'm not afraid of anything.

Trial Examiner: I made that suggestion at the beginning. I asked you if you wanted the offer to come through the witness.

Mr. Murphy: I'm sorry.

Trial Examiner: I think it's too late now. I think it's water over the dam, now that you have made your offer. I don't think it would serve any purpose whatever to take the offer through the witness now. I agree I think some of this is speculative and probably goes to the intent or the subjective

Horace S. Herrick—Direct.

state of mind of the individuals, and there is some opinion in there. However, I will permit the offer of proof to remain, and I will reject the offer.

Mr. Wayman: May we go off the record a moment?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record. Have you concluded your direct examination of the witness, Mr. Murphy?

Mr. Murphy: Yes, sir.

Trial Examiner: Any cross examination? Mr. Fleischut?

Mr. Fleischut: None, sir. However, I think it should be understood the General Counsel joins in the objection voiced by Mr. Davidson. For the purpose of shortening the record, I have not objected and made a speech on each of these occasions. I have no questions of this witness.

[551] *Trial Examiner:* Your silence shall not be construed as consent.

Mr. Fleischut: Thank you, sir.

Trial Examiner: Do you have any questions?

Mr. Davidson: Yes.

Trial Examiner: You don't have to ask them.

CROSS EXAMINATION

- Q. (*By Mr. Davidson*) Mr. Herrick, with respect to your statement, you said any time everyone knew who was working where and who had replaced whom, I believe. I hope I have fairly stated it. Can you explain to us what kinds of assurance or what kinds of information you based those statements on?
- A. Daily interviews, daily discussions—almost daily. I wouldn't say every day during the strike that it was, but it would be—
- Q. In which you asked—

Mr. Murphy: Let him finish.

The Witness: It would be almost daily, because it was our practice to go through the plant and talk with the operation managers, the foremen and some of the employees, and to keep up the morale and find out which jobs were running, and, in addition to this, make certain that the division policies were being adhered to by each operation manager and department head.

- [552] Q. (*By Mr. Davidson*) Did you check the list to see what they stated, or did you go behind them to make certain the right name was always next to the right place?
- A. It was quite easy to see that accurate lists were being kept, and that the replacements were being made correctly, because the seniority dates were shown.
- Q. And in every department the practice was the same; to take this type of list—I assume this is

provided by the company, a typewritten list with job number, name, clock number, seniority date?

A. No. Sometimes it was a card record, and sometimes it was a sheet, and sometimes it was typewritten and sometimes in pencil. However, in every case the seniority dates were shown, as well as the names of the replacements and the replaced.

Q. The card records were a separate card for each employee?

A. Each person.

Q. Was it kept in order?

A. Showing the person on the job, and who that person had replaced.

Q. In order of seniority dates they were filed?

A. Seniority dates were shown, but they weren't filed in order on seniority dates.

Q. Can you tell by a perusal of these if the right name was entered in the right place?

A. I didn't verify their accuracy, if that's what you are [553] saying.

Q. You were told by the people who reported it to you that they were accurate, is that correct?

A. No, I didn't ask the question. I just asked who was the replacement — who replaced who — and was shown the kind of record they were keeping, and I was satisfied it was accurate.

Q. This was true generally everywhere you checked?

A. Right.

Mr. Davidson: That's all.

Trial Examiner: Do you have any redirect?

Mr. Murphy: No, sir.

Harry S. Malutich—Direct.

Trial Examiner: You may step down.

(Witness excused.)

Mr. Murphy: Could we go off the record a moment.

Trial Examiner: All right, off the record.

(Discussion off the record.)

Trial Examiner: All right, the hearing will be in order.

HARRY S. MALUTICH a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (*By Mr. Murphy*) Were you employed by Erie Resistor?

A. Yes.

Q. Were you employed during the strike in 1959?

[554] A. Yes.

Q. What was your job?

A. I helped maintain the equipment, helped set up the lines in the departments.

Q. What was your title?

A. My title at that time was mechanical engineer, and the maintenance crew worked for me.

Q. Is this plant maintenance or machinery maintenance?

A. Machinery maintenance.

Q. As such, during the strike, did your duties take you throughout the Electronics Division of the plant?

A. Entirely; yes, sir.

Harry S. Malutich—Direct.

Mr. Murphy: I should like to make an offer of proof through this witness by question and answer as to the conditions in the plant.

Trial Examiner: I will let you make the offer through this witness, but, in order to keep the record straight, this will pertain to conduct on the picket line.

Mr. Murphy: This will pertain to the attitudes of the work force due to conduct on the picket line. As I understand your ruling, you do not want any specific instances on the picket line.

Trial Examiner: I didn't want any evidence pertaining to what is commonly known as misconduct on the picket line. All right, go ahead. This is coming in the nature of an offer [555] of proof?

Mr. Davidson: May I ask a question as to ground rules before we start? Are any and all questions fair on an offer of proof, regardless of whether or not—assuming the subject matter is immaterial—the question itself would be objectionable?

Trial Examiner: Since it is coming in as an offer of proof, and strictly as an offer of proof, I am not going to—you mean on technical objections as to questions?

Mr. Davidson: Questions as to state of mind, what people thought and what people felt. Are you going to permit such questions to be answered?

Trial Examiner: No. It doesn't give a witness any more leeway on psychic powers than it would if he was testifying to something material.

Harry S. Malutich—Direct.

Mr. Davidson: In other words, you will entertain objections to specific questions?

Mr. Murphy: Yes, but you will not have a right to cross examine.

Mr. Fleischut: Would it be well to establish—since we can't cross examine—whether this man was in a supervisory capacity within that period of time, within the meaning of the Act? As I understand, if he is a supervisory employee during this period of time,—

Mr. Murphy: I don't see that has anything to do with it.

[556] *Mr. Fleischut:* All right.

Trial Examiner: Go ahead. You may start on your offer.

Q. (*By Mr. Murphy*) Mr. Malutich, I think you did say your responsibilities took you throughout the plant in the electronics division during the strike?

A. Yes, sir.

Q. Is that the south and north plant?

A. The south and north plant.

Q. I will ask you as to what you observed various mornings as soon as the working force came in during the strike.

A. Work actually didn't start for some half hour or hour. People were—there was a group of discussions, and people just didn't seem to settle down to go to work. As we went around the plant maintaining equipment you would sit down at a machine where a girl was operating the machine, and she

immediately would start telling you about how afraid she was, and she didn't want to come to work tomorrow, and she didn't know what she was doing in there; and go to another plant for another piece of equipment, where a fellow would be working, and the same—he would make the same statement. He would say "Gee, I was afraid to come in this morning, and I wonder how it's going to be going out tonight".

Mr. Davidson: I object his saying what they would say.

Q. (By Mr. Murphy) Did any people state this?

A. I'm telling what was said.

[557] Mr. Davidson: Without identifying them.

Q. The Witness: Going from the south plant to the north plant, working on the equipment, two other fellows, and they were afraid enough I used to have to carry their tools across the street, because they didn't want to carry tools across the street.

Q. (By Mr. Murphy) Does 12th Street separate the north plant from the south plant?

A. Yes, sir.

Q. This is a wide public thoroughfare?

A. Yes.

Q. Where is the cafeteria?

A. It is in the north plant.

Q. Where is the bulk of the manufacturing operation?

A. The bulk of the manufacturing is in the south plant.

Harry S. Malutich—Direct.

Q. Now, in normal times when there is not a strike will you tell us what, if any, percentage or share of the south plant employees go to the north plant cafeteria?

Mr. Davidson: P object.

Trial Examiner: Overruled.

The Witness: Of the people that were working during the strike, the majority of those people eat in the cafeteria during normal times.

Q. (By Mr. Murphy) How about during the strike?

A. During the strike I don't think there were a total of [558] possibly ten people that would cross the street at lunch to eat.

Q. Now, you said that various employees at the machines made these comments to you. Was this one day, or how many days during the strike did you hear this?

A. This continued from day one until the last day.

Q. Was this just one or two employees or the same ones every day?

A. This was a predominant feeling throughout the entire plant. Comments were such any time you happened to go into the electronics division.

Q. Later on during the strike what shift were you working?

A. Later on during the strike we worked a shift from noon until midnight.

Q. Will you tell us what employees said and did about leaving at midnight?

A. Yes, sir. Leaving at midnight, a group of us—approximately thirty or thirty-five, who felt it was much safer to leave the plant in a group, en masse

Harry S. Malutich—Direct.

—we met at the exit to the plant, which is also the entrance to the parking lot. We waited there until the entire group was there, and we got in our cars and started out in a continuous line, and then we would stop on 12th Street and wait to make sure that all of the cars had gotten out of the parking area.

- Q. Were there instances, to your knowledge, of people who [559] came to work and then later on refused to come any further, any longer?
- A. Very definitely. I know of two specific cases where people were at work and were threatened—

Mr. Davidson: I object unless he was present.

- Q. (*By Mr. Murphy*) Were you present at either one of these?
- A. Yes, sir.
- Q. Tell us what your experience was.
- A. On the day of the 7th we were unable to get in the plant, and one of the bargaining-unit employees who had come back to work was riding in with me at around eleven o'clock, and since we were unable to get in the plant I took him home, and as I let him out of my car and he started into his house, out of his house came at that time a union steward. I immediately hopped out of my car with the other fellow that was with me, and we went into the house. The union steward was present, and he said he had come down to warn this fellow to not go back to work because they were out to get him.
- Q. Did this individual come back to work that day?
- A. He did not come back to work for a period of around three weeks.

Harry S. Malutich—Direct.

Q. Did you observe or experience or hear any threats given by any officers of the union?

A. Yes, sir. I did.

Q. Explain.

[560] A. I heard the president of the union threaten to kill this man if he ever got him alone.

Q. Did you ever see any or experience any property damage to the employees' vehicles?

A. Yes, sir. I did. I was bringing in a bargaining-unit employee that lives down in my area of the country, and he was parking his car on a back country road and riding in with me, and he came in this morning and his car was there and I picked him up and took him home that night—this was when I was on the day shift—I will correct that—and when we got to his car there was a can of red paint and a can of yellow paint, one dumped on his hood and one dumped on the roof of the car, and sugar in the gas tank.

Q. Did you experience any further obstacles in leaving the plant at various times?

A. There were continually tacks in the parking area.

Q. What kind of tacks are you talking about?

A. Roofing nails about an inch and a half long, and as we were leaving the parking area at night, twelve o'clock, a group of us each night walked through the parking area in the vicinity of the cars, over to Popular Street and down Popular Street looking for tacks and picking those up so we didn't get flat tires.

Mr. Murphy: I think that concludes my offer of proof with this witness.

Harry S. Malutich—Cross.

[561] *Trial Examiner*: All right, I will reject your offer.

Mr. Murphy: That's all.

Trial Examiner: Just a moment. Do you have any questions of this witness?

Mr. Davidson: It is my understanding I am not entitled to cross examine.

Trial Examiner: Not on the offer of proof, no.

Mr. Davidson: Did he testify as to anything else?

Mr. Murphy: No.

Trial Examiner: He gave his name and address.

CROSS EXAMINATION

Q. (By Mr. Davidson) Did you state your position in the plant?

A. Mechanical engineer and supervisor of machine maintenance.

Q. Were you in the bargaining unit?

A. No.

Q. You had employees who you supervised in their duties?

A. Yes, sir.

Q. How long have you worked for Erie Resistor?

A. Oh, two and a half years.

Mr. Davidson: That's all.

Trial Examiner: You may step down.

(Witness excused.)

Offers of Counsel.

Mr. Murphy: We would now like, to protect our record, to make a general offer of proof by a series of witnesses, includ-[562]ing the sheriff of Erie County, Mr. John Coates, and various supervisory and non-bargaining-unit employees who worked throughout the strike, to show specifically what happened on the picket line on the various days, from the beginning to the end of the picketing, the difficulty of getting in, and to show—through motion pictures taken and by individual stills taken—the conditions at the plant at various mornings and afternoons as employees were coming in and out, and to show further—by specific witnesses—specific individual acts of violence to persons in the nature of assault and battery, to personal property, particularly automobiles, and to homes and apartments.

I think that, in a general nature, is our offer, sir.

Trial Examiner: All right, I will reject that offer.

Mr. Murphy: With that offer, the Respondent rests.

Trial Examiner: Does the General Counsel have any rebuttal?

Mr. Murphy: I have a question or so concerning the offer.

Mr. Fleischut: Can you name names regarding the offer or make reference to this court transcript?

Mr. Davidson: Is this transcript coming in?

Mr. Murphy: No, this transcript belongs to the Court of Common Pleas, and I am not about to go and make a copy of some two or three hundred pages for a rejected exhibit.

Mr. Fleischut: I wonder if there isn't a procedure where-[563]by it could remain here and remain available, and then we would have a record which may be evaluated at such time as it need be evaluated.

Mr. Wayman: We have offered a certified copy of the proceedings in this Court on which you will find the number and term of Court and from which you can discover the transcript of testimony that backs up the decision and order of the Court. I think perhaps that is sufficient reference to the paper you are talking about.

Trial Examiner: I don't know what good it would be to refer to this document by case number or its location, because if I am in Washington it's not doing me much good sitting up here in Erie, and the same is true when the Board considers this matter.

Of course, I know in the injunction cases in the United States District Courts, where the General Counsel obtains an injunction, the record in many cases is stipulated into the Complaint case, but that is a different situation. The record is available in the regional office and available in Washington. But this, of course, would not be. If you want to make this a little more specific on your offer of proof, you mentioned the sheriff's name, and if you want to

Offers of Counsel.

mention other persons who would testify to that effect you might mention them.

Mr. Murphy: We would, through the testimony of Mr. George Fryling, II, show the moving pictures; other witnesses whom we [564] would put on the stand would be Messrs. Donatelli, Mikoda, Kivonak, Miss or Mrs. Delio, Deputy Sheriff Hamisek, Messrs. Yeager, Shoff, Locker, Hamilton, Deutch, Sparks, Miss Agrest and Miss Izzo. I think that's enough.

Mr. Fleischut: Would that limit the list of witnesses available for this offer?

Mr. Murphy: No. If this testimony were admitted we would put—as to specific items of damage and violence and misconduct—put probably fifty on. We think many would be corroborative, and not necessary to prove the point.

Trial Examiner: The Company now rests its case?

Mr. Murphy: Yes.

Mr. Fleischut: I will call Mr. Bordonaro for about two questions.

EDWARD F. BORDONARO a witness called by and on behalf of the General Counsel, having been previously duly sworn, was recalled, examined and testified further, as follows:

Trial Examiner: You have already been sworn as a witness in this hearing, and you are still under oath.

RE-DIRECT EXAMINATION (Continued)

Q. (*By Mr. Fleischut*) Mr. Bordonaro, do you recall any occasion during negotiations when the company negotiators said that super-seniority must be granted because of picket-line violence or mass picketing?

[565] A. No, I do not.

Mr. Fleischut: No further questions.

Trial Examiner: Is there any cross examination?

Mr. Wayman: I have one question.

RE-CROSS EXAMINATION

- Q. (*By Mr. Wayman*) Mr. Bordonaro, will you look at General Counsel's Exhibit 6, please? Do you have that exhibit?
- A. Yes.
- Q. Have you ever seen that exhibit before?
- A. I have.
- Q. Isn't it true at the meeting of June 11th you discussed that exhibit and its contents?
- A. To the best of my knowledge I did not.
- Q. You don't remember that?
- A. I don't remember that.
- Q. Did you ever discuss this exhibit and its contents with any of the negotiating people during the course of the strike?
- A. Could I see that again?
- Q. Yes.
- A. I didn't read it all.
- Q. Your counsel just took it away from me, and now we will have to find it again. Take your time, and read it, Mr. Bordonaro.
- A. Again, I haven't read all of the letter. There are some [566] things in the letter that had been discussed in negotiations, that's true.

* * * * *

Respondent's Exhibit 1

UNION PROPOSAL

6/24/59—5:30 p.m.

Union proposes that the strike be considered terminated and all pickets will be withdrawn on the basis of:

1. The replacement problem to be resolved by the NLRB or final disposition by Fed. Courts as agreed to earlier today.
2. Union agree to Maintenance of Membership proposal as agreed to earlier today.
3. In the case of Gerald Grafius, it will be resolved by the Court as proposed by the Company.

On the four (4) other discharged employees, that further discussion will be held at a later date with the understanding being that in the case of Edward Karpinski and Val Skiba that disciplinary layoff should not be more than ninety (90) days.

It is understood that the Company will provide the Union with all of the necessary information that it seeks on job openings, replacements and other matters pertinent to getting the people back to work.

It is further understood that all people who have been replaced will be considered as laid-off employees.

It is further agreed that a moratorium will take place on the granting of any additional seniority to anyone who may return to work while this proposal is being considered.

Respondent's Exhibit 12.

Respondent's Exhibit 12

EMPLOYEES WORKING ON PRODUCTION OR MAINTENANCE
JOBS DURING THE STRIKE.—BEGINNING WITH WEEK OF
FIRST REPLACEMENTS

Week Ending	Clerical & Other	Permanent Replacement New Employee	Temporary Replacement New Employee	Laid Off Employee Permanent Replacement	Returning Strikers	Total
5- 4-59	140	0	0	0	0	140
5-11-59	140	1	0	23	1	165
5-18-59	140	1	0	32	4	177
5-25-59	140	8	0	39	5	192
6- 1-59	140	18	0	39	8	205
6- 8-59	140	34	35	47	23	279
6-15-59	140	43	58	59	87	387
6-22-59	140	57	58	70	125	450

*Respondent's Exhibit 13.***Respondent's Exhibit 13****ERIE RESISTOR CORPORATION****Electronics Division—Bargain Unit Employees**

	<u>Total # Hourly</u>	<u># Non- Bargaining Unit</u>	<u>Bargaining Unit</u>
Week of June 29, 1959	435	77	358
" " July 6 "	435	72	363
" " July 13 "	433	68	365
" " July 20 "	435	71	364
" " July 27 "	420	58	362
" " Aug. 3 "	432	58	374
" " Aug. 10 "	434	69	365
" " Aug. 17 "	431	68	363
" " Aug. 24 "	442	70	372
" " Aug. 31 "	452	68	384
" " Sept. 7 "	503	77	426
" " Sept. 14 "	507	75	432
" " Sept. 21 "	515	73	442
" " Sept. 28 "	512	71	441
" " Oct. 5 "	506	72	434
" " Oct. 12 "	495	74	421
" " Oct. 19 "	491	72	419
" " Oct. 26 "	490	72	418
" " Nov. 2 "	496	72	424
" " Nov. 9 "	464	69	395
" " Nov. 16 "	455	66	389
" " Nov. 23 "	463	68	395
" " Nov. 30 "	442	66	376
" " Dec. 7 "	440	63	377
" " Dec. 14 "	433	64	369
" " Dec. 21 "	436	63	373
" " Dec. 28 "	399	59	340

Respondent's Exhibit 13.

	<u>Total # Hourly</u>	<u># Non- Bargaining Unit</u>	<u>Bargaining Unit</u>
Week of Jan. 4, 1960	345	37	308
" " Jan. 11 "	345	33	312
" " Jan. 18 "	319	32	287
" " Jan. 25 "	298	30	268
" " Feb. 1 "	295	29	266
" " Feb. 8 "	291	29	262
" " Feb. 15 "	290	28	262
" " Feb. 22 "	288	28	260
" " Feb. 29 "	281	29	252
" " March 7 "	286	30	256
" " March 14 "	286	30	256
" " March 21 "	284	30	254
" " March 28 "	287	29	258
" " April 4 "	295	30	265
" " April 11 "	280	30	250
" " April 18 "	278	30	248
" " April 25 "	268	28	240

*General Counsel's Exhibit 1.***General Counsel's Exhibit 1****COMPLAINT AND NOTICE OF HEARING**

It having been charged by International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO, herein termed the Union, that Erie Resistor Corporation, herein termed the respondent, has engaged in, and is now engaging in, unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein termed the Act; the General Counsel of the National Labor Relations Board, herein termed the Board, on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing, pursuant to Section 10 (b) of the Act, and Section 102.15 of the Board's Rules and Regulations, Series 8.

1. A true copy of the original charge filed July 21, 1959, by the Union was duly served by registered mail on Respondent on July 21, 1959. A true copy of the First Amended Charge filed July 23, 1959, by the Union was duly served on Respondent by registered mail on July 23, 1959. A true copy of the Second Amended Charge filed September 11, 1959, by the Union was duly served by registered mail on Respondent on September 14, 1959. A true copy of the Third Amended Charge filed April 1, 1960, by the Union was duly served by registered mail on Respondent on April 1, 1960.

2. Respondent is, and has been at all times material hereto, a Corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania, engaged in the manufacture, distribution and industrial sale of electronics and plastic products. Re-

General Counsel's Exhibit 1.

Respondent's principal office is located in Erie, Pennsylvania, and it maintains and operates manufacturing facilities in several states of the United States. During the past twelve month period the Respondent at its Erie, Pennsylvania, facilities, shipped products directly to points outside the Commonwealth of Pennsylvania of a value in excess of \$50,000.00.

3. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

4. From on or about March 1, to on or about June 24, 1959, employees of the Respondent employed at its Erie facilities engaged in a strike.

5. The unit involved herein as set forth below constitutes an appropriate unit for purposes of collective bargaining within the meaning of Section 9 (a) of the Act:

All production and maintenance employees at Respondent's Erie, Pennsylvania, plants, excluding clerical employees, office employees, Engineering Department employees, Accounting Department employees, Sales Department employees, Personnel Department employees, time study employees, expeditors, laboratory employees, nurses, quality control inspectors, timekeeping employees, executives, guards, professional employees and supervisors as defined in the Act.

6. The Union, having been duly designated and selected by a majority of Respondent's employees in the unit described in paragraph 5 above, has been, and is now, the exclusive bargaining representative of the aforesaid employees in the designated unit within the meaning of Section 9 (a) of the Act.

7. Since on or about January 26, 1959, and at all times thereafter, the Union, by its officers, agents and representatives, has requested the Respondent to bargain collectively with it as exclusive representative of the employees described in paragraph 5 above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

8. Since on or about May 1, 1959, and thereafter, the Respondent, by its officers, agents and representatives, has failed and refused to bargain collectively in good faith with the Union as exclusive representative of the employees in the unit described in paragraph 5 above, more specifically by:

- (a) Unilaterally altering the relative seniority of its employees, including strikers.
- (b) Insistence upon the establishment of a discriminatory seniority policy as a condition precedent to agreement upon a collective bargaining contract with the Union.
- (c) Refusal to provide the Union with a list of replaced strikers, as requested by the Union.
- (d) Engaging in dilatory and delaying tactics and by shifting positions during collective bargaining.
- (e) Permitting inadequate time for consideration by the Union of the Respondent's contract proposals.
- (f) Refusing to attend negotiating sessions unless arranged through the Federal Mediation and Conciliation Service.

General Counsel's Exhibit 1.

9. On or about May 27, 1959, Respondent promulgated and has to date maintained a seniority policy by which its employees, who engaged in the strike described in paragraphs 4 and 11 herein, were deprived of their proper seniority status or rank.

10. On or about May 27, 1959, Respondent promulgated and has to date maintained a discriminatory seniority policy by which its employees who engaged in the strike described in paragraphs 4 and 11 herein, were deprived of their proper seniority status or rank because they engaged in said strike, because of, and for the purpose of, discouraging membership in, sympathy for, and activities on behalf of the Union, and because they engaged in and for the purpose of discouraging other concerted and Union activities for the purpose of collective bargaining and other mutual aid and protection.

11. The strike described in paragraph 4 herein was from on or about May 11, 1959, and thereafter, prolonged and continued by the unfair labor practices described in paragraphs 8, 9 and 10 herein.

12. On and after the conclusion of the strike described in paragraphs 4 and 11 herein, on or about June 24, 1959, the employees named in Schedule A attached made an unconditional offer to return to their former or substantially equivalent positions of employment.

13. On or about June 24, 1959, and at all times thereafter, Respondent did fail and refuse, and continues to fail and refuse, to reinstate the employees listed in said Schedule A to their former or substantially equivalent positions of employment because they engaged in the strike described in paragraphs 4 and 11 above, be-

General Counsel's Exhibit 1.

cause of the seniority policy described in paragraphs 9 and 10 above, because of and for the purpose of discouraging membership in, sympathy for, and activities on behalf of the Union, and because they engaged in and for the purpose of discouraging other concerted activities for the purpose of collective bargaining and other mutual aid and protection.

14. Respondent has, since on or about June 24, 1959, discriminatorily laid off divers employees because of the seniority policy described in paragraphs 9 and 10 above, because they engaged in the strike described in paragraphs 4 and 11 above, because of and for the purpose of discouraging membership in, sympathy for, and activities on behalf of the Union, and because they engaged in and for the purpose of discouraging other concerted activities for the purpose of collective bargaining and other mutual aid and protection.

15. By the acts described in paragraphs 9, 10, 13 and 14 above, and by each of the said acts, Respondent did discriminate, and is now discriminating, in regard to hire, tenure, terms and conditions of employment and thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

16. By the acts described in paragraph 8 above, and by each of the said acts, Respondent did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

17. By the acts described in paragraphs 8, 9, 10, 13 and 14 above, and by each of the said acts, Respondent did interfere with, restrain and coerce, and is now

General Counsel's Exhibit 1.

interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby Respondent did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

13. The activities of Respondent, as set forth in paragraphs 8, 9, 10, 13 and 14 above, occurring in connection with the operations of Respondent, described in paragraph 2 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and tend to lead to labor disputes obstructing commerce and the free flow of commerce.

19. The aforementioned acts of Respondent, as set forth in paragraphs 8, 9, 10, 13 and 14 above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) (3) and (5) and Sections 2 (6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 25th day of April, 1960, at ten o'clock in the forenoon, Daylight Saving Time, in the Grand Jury Room, United States Court House, Erie, Pennsylvania, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National

General Counsel's Exhibit 1.

Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

DATED AT Pittsburgh, Pennsylvania, this 7th day of April, 1960.

HENRY SHORE

Regional Director, Sixth Region
NATIONAL LABOR RELATIONS BOARD
2107 Clark Building
Pittsburgh 22, Pennsylvania

ANSWER

ERIE RESISTOR CORPORATION, respondent above named, answers the Complaint filed herein as follows:

1. The allegations of paragraph 1 of the Complaint are admitted.

2. The allegations of paragraph 2 of the Complaint are admitted.

3. The allegations of paragraph 3 of the Complaint are admitted.

4. The allegations of paragraph 4 of the Complaint are denied. Respondent avers that the Union engaged in an economic strike at the Erie plant beginning at about midnight on March 31, 1959, and that the strike continued until at least June 25, 1959.

5. The allegations of paragraph 5 of the Complaint are denied. Whether or not the unit as described is appropriate is a conclusion of law requiring no answer, but

General Counsel's Exhibit 1.

respondent avers that the circumstances that existed when the described unit was certified have changed substantially since that time.

6. Whether or not the Union is in fact the exclusive representative of the employees in the unit described depends upon the answer to divers legal questions. Respondent is without knowledge of the truth or falsity of the allegations as to any facts contained in paragraph 6 of the Complaint. However, respondent admits that it has bargained with the Union and entered into two collective agreements since the times mentioned in the Complaint.

7. The allegations of paragraph 7 of the Complaint are denied. Respondent avers that on numerous occasions, both prior to and since January 29, 1959, the Union requested that respondent bargain, and that respondent did bargain, but avers that the allegations of the Complaint are so vague and general that they are inaccurate.

8. The allegations of paragraph 8 of the Complaint are denied. Specifically it is denied that since on or about May 1, 1959, and thereafter, the respondent, by its officers, agents and representatives, has failed and refused to bargain collectively in good faith with the Union as exclusive representative of the employees in the unit described in paragraph 5 of the Complaint, more specifically by:

- (a) Unilaterally altering the relative seniority of its employees, including strikers.
- (b) Insistence upon the establishment of a discriminatory seniority policy as a condition precedent to agreement upon a collective bargaining contract with the Union.

- (c) Refusal to provide the Union with a list of replaced strikers, as requested by the Union.
- (d) Engaging in dilatory and delaying tactics and by shifting positions during collective bargaining.
- (e) Permitting inadequate time for consideration by the Union of the respondent's contract proposals.
- (f) Refusing to attend negotiating sessions unless arranged through the Federal Mediation and Conciliation Service.

9. Respondent denies that on or about May 27, 1959, respondent promulgated and has to date maintained a seniority policy by which its employees, who engaged in the strike described in paragraphs 4 and 11 of the Complaint, were deprived of their proper seniority status or rank.

10. Respondent denies that on or about May 27, 1959, respondent promulgated and has to date maintained a discriminatory seniority policy by which its employees who engaged in the strike described in paragraphs 4 and 11 of the Complaint were deprived of their proper seniority status or rank because they engaged in said strike, because of, and for the purpose of, discouraging membership in, sympathy for, and activities on behalf of the Union, and because they engaged in activities for the purpose of collective bargaining and other mutual aid and protection.

11. Respondent denies that the strike described in paragraph 4 of the Complaint was from on or about May 11, 1959, and thereafter, prolonged and continued by the

General Counsel's Exhibit 1.

unfair labor practices described in paragraphs 8, 9 and 10 of the Complaint.

12. Respondent denies that on and after the conclusion of the strike described in paragraphs 4 and 11 of the Complaint, on or about June 24, 1959, the employees named in Schedule A, attached to the Complaint, made an unconditional offer to return to their former or substantially equivalent positions of employment.

13. Respondent denies that on or about June 24, 1959, and at all times thereafter, respondent did fail and refuse, and continues to fail and refuse, to reinstate the employees listed in said Schedule A to their former or substantially equivalent positions of employment because they engaged in the strike described in paragraphs 4 and 11 of the Complaint, because of the seniority policy described in paragraphs 9 and 10 of the Complaint, because of and for the purpose of discouraging membership in, sympathy for, and activities on behalf of the Union, and because they engaged in and for the purpose of discouraging other concerted activities for the purpose of collective bargaining and other mutual aid and protection.

14. Respondent denies that respondent has, since on or about June 24, 1959, discriminatorily laid off divers employees because of the seniority policy described in paragraphs 9 and 10 of the Complaint, because they engaged in the strike described in paragraphs 4 and 11 of the Complaint, because of and for the purpose of discouraging membership in, sympathy for, and activities on behalf of the Union, and because they engaged in and for the purpose of discouraging other concerted activi-

General Counsel's Exhibit 1.

ties for the purpose of collective bargaining and other mutual aid and protection.

15. Respondent denies that by the acts described in paragraphs 9, 10, 13 and 14 of the Complaint, and by each of the said acts, respondent did discriminate, and is now discriminating, in regard to hire, tenure, terms and conditions of employment and thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

16. Respondent denies that by the acts described in paragraph 8 of the Complaint, and by each of the said acts, respondent did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

17. Respondent denies that by the acts described in paragraphs 8, 9, 10, 13 and 14 of the Complaint, and by each of the said acts, respondent did interfere with, restrain and coerce, and is now interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby respondent did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

18. Respondent denies that the activities of respondent, as set forth in paragraphs 8, 9, 10, 13 and 14 of the Complaint, occurring in connection with the operations of respondent, described in paragraph 2 of the Complaint, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and tend to lead to labor disputes obstructing commerce and the free flow of commerce.

General Counsel's Exhibit 1.

19. Respondent denies that the aforementioned acts of respondent, as set forth in paragraphs 8, 9, 10, 13 and 14 of the Complaint, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3) and (5) and Sections 2 (6) and (7) of the Act.

WHEREFORE, respondent prays that the Complaint be dismissed in its entirety.

JOHN G. WAYMAN

REED SMITH SHAW & McCLAY

747 Union Trust Building
Pittsburgh, Pennsylvania

Attorneys for Erie Resistor
Corporation, Respondent

Of Counsel:

Irving O. Murphy
615 Masonic Building
Erie, Pennsylvania

Dated: April 28, 1960.

*General Counsel's Exhibit 2.***General Counsel's Exhibit 2****ERIE RESISTOR CORPORATION****Summary of Meetings with Local 613,
IUE-AFL-CIO****Local Union Committee:**

- | | |
|------------------------|----------------------|
| 1. Edward Bordonaro | 6. Samuel Fargiorgio |
| 2. Edward Karpinski | 7. William Parker |
| 3. Ethel Guianen | 8. Paul Bacik |
| 4. Milton Sipple | 9. Fred Carpen |
| 5. Homer Gindlesperger | |

Company Committee:

- | | |
|-------------------|------------------|
| 1. Gordon Ferrell | 4. Lewis Shiolen |
| 2. George Schau | 5. Ray Bertone |
| 3. Edmund Willis | |

Number	Date	Hour	Persons Present
1	2/10/59	9:30 A.M.- 12:20 P.M.	Local Union Committee; International Represent- atives — Charles Cope- land; Joseph Considine, and Company Committee
2	2/17/59	9:30 A.M.- 12:00 Noon	Local Union Committee; Company Committee
3	2/19/59	9:00 A.M.- 12:00 Noon	Local Union Committee; Company Committee, ex- cept Edmund Willis
4	2/23/59	9:00 A.M.- 12:00 Noon	Local Union Committee; Company Committee
5	2/25/59	9:00 A.M.- 12:20 P.M.	Local Union Committee; Company Committee
6	2/26/59	9:00 A.M.- 12:00 P.M.	Local Union Committee; Company Committee

General Counsel's Exhibit 2.

Number	Date	Hour	Persons Present
7	3/ 2/59	9:00 A.M.- 12:00 P.M.	Local Union Committee; International representative—Charles Copeland; Company Committee
8	3/ 3/59	9:00 A.M.- 12:00 Noon	Local Union Committee; International representative—Charles Copeland; Company Committee
9	3/ 6/59	8:00 A.M.- 2:00 P.M.	Local Union Committee; International representative—Joseph Considine; Company Committee
10	3/ 9/59	8:00 A.M.- 12:00 P.M.	Local Union Committee; International representative—Joseph Considine; Company Committee
11	3/10/59	8:00 A.M.- 12:15 P.M.	Local Union Committee; International representative—Charles Copeland; Company Committee (Geertson substituted for Shiolen)
12	3/12/59	7:00 A.M.- 12:00 Noon	Local Union Committee; International representatives—Charles Copeland and J. Considine; Company Committee
13	3/13/59	7:00 A.M.- 12:00 Noon	Local Union Committee; International representative—Joseph Considine; Company Committee
14	3/16/59	8:00 A.M.- 12:00 Noon	Local Union Committee; International representative—Joseph Considine; Company Committee; Company Guests — W. Crotty, C. Geertson, H. Herrick, N. Coda

General Counsel's Exhibit 2.

Number	Date	Hour	Persons Present
15	3/17/59	8:00 A.M.- 12:10 Noon	Local Union Committee; International representative—Joseph Considine; Company Committee, except Edmund Willis and Herrick
16	3/20/59	8:00 A.M.- 12:00 Noon	Local Union Committee; International representative—Joseph Considine; Company Committee; Additional Company representatives: W. Crotty and C. Geertson
17	3/23/59	8:00 A.M.- 12:00 Noon	Local Union Committee; International representative—Joseph Considine; Company Committee
18	3/24/59	7:00 A.M.- 4:10 P.M.	Local Union Committee; International representative—Joseph Considine; Company Committee
19	3/25/59	8:00 A.M.- 4:00 P.M.	Local Union Committee; International representative—Joseph Considine and Charles Copeland; Company Committee
20	3/26/59	8:00 A.M.- 4:30 P.M.	Local Union Committee; International representative—Joseph Considine; Company Committee
21	3/27/59	8:00 A.M.- 11:20 P.M.	Local Union Committee; International representative—Joseph Considine; Company Committee
22	3/31/59- 4/1/59	8:00 A.M.- 3/31-10:00 A.M., 4/1	Local Union Committee; International representatives—Joseph Considine and Charles Copeland; Company Committee

General Counsel's Exhibit 2.

Number	Date	Hour	Persons Present
23	4/ 8/59	10:00 A.M.- 6:25 P.M.	Federal Mediator, Grover Stainbrook; Local Union Committee; International representative — Joseph Considine; Company Committee
24	4/14/59	10:00 A.M.- 5:00 P.M.	Federal Mediator, Grover Stainbrook; State Mediator Michael Prime; Guest—Msgr. Franklin; Local Union Committee; International representative—Charles Copeland; Company Committee
25	4/21/59	10:00 A.M.- 4:00 P.M.	Federal Mediator, Grover Stainbrook; State Mediator Michael Prime; Local Union Committee; International representative — Charles Copeland; Company Committee
26	4/24/59	10:00 A.M.- 11:30 A.M.	Federal Mediator, Grover Stainbrook; State Mediator Michael Prime; Local Union Committee; International representative — Charles Copeland; Company Committee
27	4/28/59	9:30 A.M.- 5:00 P.M.	Federal Mediator, Grover Stainbrook; State Mediator Michael Prime; International representative—Charles Copeland; Local Union Committee; Company Committee

General Counsel's Exhibit 2.

541a

<u>Number</u>	<u>Date</u>	<u>Hour</u>	<u>Persons Present</u>
28	4/29/59	10:00 A.M.- 2:30 P.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Local Union Committee; International representative—Charles Copeland; Company Committee
29	5/ 5/59	10:00 A.M.- 12:15 P.M.	Federal Mediator, Grover Stainbrook; International representative — Charles Copeland; Local Union Committee; Her- rick
30	5/ 6/59	10:00 A.M.- 11:30 P.M.	Federal Mediator, Grover Stainbrook; International representative — Charles Copeland; Local Union Committee; Company Committee
31	5/11/59	7:00 A.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Local Union Committee; International representative—Charles Copeland; Company Committee — Grafius (Union)
32	5/13/59	10:00 A.M.- 12:00 P.M. 2:30 P.M. 5:00 P.M.	State Mediator, Michael Prime; Local Union Committee; International representative — Charles Copeland; Company Committee. At 2:30 P.M. International representatives—Roger Coyne, Angello Colella, and Joseph Considine—Grafius (Union)

General Counsel's Exhibit 2.

Number	Date	Hour	Persons Present
33	5/14/59	10:00 A.M.- 12:00 P.M. 2:00 P.M. } 5:00 P.M. }	Federal Mediator, Grover Stainbrook; State Mediator Michael Prime; Local Union Committee; International representatives—Copeland, Coyne, Colella; Company Committee—Grafius (Union)
34	5/18/59		(off the record)
35	5/22/59	10:00 A.M.- 12:00 Noon	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Local Union Committee; International representatives—Copeland, Coyne, Colella; Company Committee
36	5/23/59	9:30 A.M.-	Local Union Committee; International representatives Copeland, Coyne; State Mediator, Michael Prime; Company Committee—Grafius (Union)
37	5/28/59	10:00 A.M.- 12:00 P.M. 2:30 P.M. 4:30 P.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Local Union Committee, plus "Shy" Jankowski; International representatives—Copeland, Coyne, Colella; Company Committee—Grafius (Union)
38	5/29/59	2:00 P.M. 3:11 P.M.	Local Union Committee; International representatives—Copeland and Colella; Company Committee

General Counsel's Exhibit 2.

543a

Number	Date	Hour	Persons Present
39	6/ 2/59	10:00 A.M.- 4:00 P.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Company representatives—Ferrell, Shiolen, Bertone; International representative — Colella
40	6/ 3/59		State Mediator, Michael Prime; International representative — Colella; Company Committee
41	6/ 4/59		Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Company representatives—Ferrell, Shiolen; International representative—Colella. At 3:30 P. M. Local Union Committee men Bordonaro, Karpinski and Guianan were added
42	6/ 5/59		Federal Mediator, Grover Stainbrook; Company representatives — Ferrell, Shiolen; International representative — Colella; Local Union Committee representatives — Bordonaro, Karpinski, Guianan
43	6/11/59		Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Company representatives — Ferrell, Schau, Bertone; International representatives—Coyne, Copeland; Local Union Committee representatives — Bordonaro, Guianan

General Counsel's Exhibit 2.

Number	Date	Hour	Persons Present
44	6/12/59	1:30 P.M. 3:25 P.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Company representatives — Ferrell, Schau, Bertone; International representative — Coyne; Local Union Committee
45	6/13/59	2:00 P.M. 3:25 P.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Local Union Committee representatives — Guianen, Grafius, Fargiorgio, Bordonaro, Karpinski, Gindlesperger; International representative — Copeland; Company representatives — Ferrell, Schau, Bertone
46	6/16/59	3:00 P.M. 5:00 P.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; Company representatives — Schau, Ferrell, Shiolen, Bertone; Local Union Committee representatives — Karpinski, Guianen, Parker, Fargiorgio, Bacik; International representatives — Copeland, Coyne, Colella
47	6/23/59	10:00 A.M.- 5:05 P.M.	Federal Mediator, Grover Stainbrook; State Mediator Michael Prime; Company representatives — Ferrell, Schau, Shiolen, Bertone; Local Union Committee representative — Bordonaro; International representative — Coyne

General Counsel's Exhibit 2.

545a

umber	Date	Hour	Persons Present
48	6/24/59	11:00 A.M.- 5:40 P.M.	State Mediator, Michael Prime; Local Union Committee; International representatives — Coyne, Colella, Fagan; Company representatives — Ferrell, Schau, Shiolen, Bertone
49	7/ 7/59	10:00 A.M.- 3:40 P.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; International representatives—Copeland, Colella, McHugh; Local Union Committee representatives—Bordonaro, Guianen, Karpinski, Fargiorio, Carpen, Gindlesperger, Bacik; Company representatives — Ferrell, Schau, Shiolen, Bertone
50	7/ 8/59	2:00 P.M.	Federal Mediator, Grover Stainbrook; State Mediator, Michael Prime; International representatives—Copeland, Colella; Local Union Committee representatives — Bordonaro, Guianen, Karpinski, Fargiorio, Carpen, Gindlesperger, Bacik; Company representatives — Ferrell, Schau, Shiolen, Bertone

General Counsel's Exhibit 2.

<u>Number</u>	<u>Date</u>	<u>Hour</u>	<u>Persons Present</u>
51	7/15/59	10:00 A.M.	Federal Mediator, Grover Stainbrook; Company representatives -- Ferrell, Bertone, Ehrman; Local Union Committee representatives -- Bordonaro, Guianen, Karpinski, Far ² giorgio, Bacik
52	7/17/59		C o m p a n y representatives -- Ferrell, Ehrman, Bertone; International representative Colella; Local Union Committee representatives -- Bordonaro, Karpinski, Guianen

General Counsel's Exhibit 3

REPLACEMENT LISTING

REPLACED EMPLOYEES

<i>Name</i>	<i>Replacement Date</i>
Ed Gorski	5-11-59
Ida Cianflone	5-11-59
Frances Simon	5-12-59
Norbert Romanowicz	5-13-59
Sophie Konecko	5-13-59
Sara McKinney	5-13-59
Adella Miraldi	5-13-59
Pearl Mello	5-14-59
Adele Graves	5-14-59
Joe Janulewski	5-14-59
Wilford Hamm	5-14-59
David Higham	5-15-59
Danny Camino	5-15-59
June Niedrick	5-18-59
Vera Falderoff	5-18-59
Sam Baker	5-18-59
Edward Bordonaro	5-18-59
Norbert Grotkowski	5-18-59
Julia Sulkowski	5-20-59
Charles Jenks	5-28-59
Mary Leonardi #1103	5-28-59
William Cahill	5-28-59
John Hammer	5-28-59
Raymond Wycheck	5-28-59
James Paterson	5-29-59
Bertha Cline	6- 1-59
Joshua Martin	6- 1-59
Minnie Aiken	6- 1-59
Walter Brown	6- 5-59
Irene Bearce	6- 5-59

General Counsel's Exhibit 3.

<i>Name</i>	<i>Replacement Date</i>
Dorothy Schaffer	6- 5-59
Martin Denial	6- 6-59
Laura Carlisle	6- 8-59
Charles Peterson	6- 8-59
Francis McCracken	6- 8-59
Alice Krolak	6- 8-59
John DiMattio	6- 8-59
Rosalie Crosby	6- 9-59
Kathleen Gasper	6- 9-59
Robert DeFonzo	6- 9-59
Morris Schneider	6- 9-59
William Parker	6- 9-59
Edith Burkett	6- 9-59
Ella Mayes	6- 9-59
Savina Langley	6-10-59
Roland Myers	6-10-59
Joe Haibach	6-10-59
William Erpenback	6-10-59
Rose Sopp	6-10-59
Dorothy Martin	6-10-59
Elmer Hunt	6-11-59
Henrietta Thomas	6-11-59
Mary Wittenburg	6-11-59
Harry Layne	6-12-59
William Ripple	6-13-59
Paul Bacik	6-15-59
Ann Lunger	6-15-59
Ethel Guianen	6-16-59
Mildred Horton	6-16-59
Flora Lechner	6-16-59
Vivian Scriven	6-16-59
Roma Bolakowska	6-16-59
Charlene Holman	6-17-59
Ettore Presogna	6-17-59

General Counsel's Exhibit 3.

549a

<i>Name</i>	<i>Replacement Date</i>
Carl Norman	6-17-59
Jane Platz	6-17-59
Al Fiscus	6-17-59
Cyril Weithman	6-18-59
Rozene Jones	6-18-59
Lizetta Massello	6-18-59
Howard Wilson	6-18-59
Elsie Ahlbrandt	6-18-59
John Alexander	6-18-59
Arthur Knepley	6-18-59
Bertha Szymanski	6-18-59
Mary Lecorchick	6-18-59
Frances McDonald	6-18-59
Virginia Weber	6-18-59
Gertrude Pollard	6-19-59
Marion Lindberg	6-19-59
Albennie Ross	6-19-59
Elmer Jones	6-19-59
Charlotte Steward	6-19-59
Mary Pomorski	6-19-59
Kathryn Vargo	6-19-59
Eleanor Barnett	6-19-59
Evelyn Petrigini	6-19-59
Frank Sullivan	6-19-59
Delores DiSanti	6-19-59
Leonard Zielinski	6-19-59
Jane Kriner	6-22-59
Kay Christie	6-22-59
Tom Capito	6-22-59
Joe Kitza	6-22-59
Jodie Lee	6-22-59
Frank Zielonis	6-22-59
Mary Frith	6-22-59
Dorothy Strick	6-22-59

General Counsel's Exhibit 3.

<i>Name</i>	<i>Replacement Date</i>
Marie Geisler	6-22-59
Dorothy Kenzora	6-22-59
Dorothy Rose	6-22-59
Edith Chizmadia	6-22-59
Florence Daley	6-22-59
Carl Crocoll	6-23-59
Madelyn Payha	6-23-59
Madison Pollard	6-23-59
Elizabeth Koen	6-23-59
Dan McAdoo	6-23-59
Al Szuchmanski	6-23-59
Helen Larson	6-23-59
Rose Sirian	6-23-59
Mary Cacchione	6-23-59
Helen Yuhas	6-23-59
Clara Kulig	6-23-59
Mildred Moskot	6-23-59
Rose Riazzi	6-23-59
Alice Battles	6-24-59
Mary Parker	6-24-59
William Balkovic	6-24-59
Pedro Fernandez	6-24-59
Robert Seth	6-24-59
Pearl Kobylinski	6-24-59
Kenneth Mattson	6-24-59
Anthony Bucceri	6-24-59

*General Counsel's Exhibit 5B.***General Counsel's Exhibit 5 B**

Erie, Pa., Times, Monday, May 25, 1959

\$1,000 REWARD!

A \$1,000.00 reward will be paid by Erie Resistor Corporation for information hereafter furnished leading directly to the arrest and conviction of the first person or persons found guilty of secret and underhanded assault, vandalism or anonymous threats directed against any presently working Erie Resistor employee.

ERIE RESISTOR CORP.

G. RICHARD FRYLING, President

A Report to the Community on the Erie Resistor Strike

Seventy-four days have elapsed since officers of IUE Local 613 called a strike at four local plants of the Erie Resistor Corporation.

The present and future economic loss to the Company has been considerable. Lack of pay checks has resulted in real hardship for many Erie Resistor employees and virtually every business in the Erie community has been hurt by the loss of this portion of Erie Resistor's payrolls . . . which since the strike started on March 31, approaches one-half million dollars.

WHY DID THIS HAVE TO HAPPEN? WHY DOES IT STILL CONTINUE?

In previous years the company reluctantly gave in to unrealistic demands of the Union when it struck or threatened to strike. This year after the Union had called the strike there was no choice but to resist to the bitter end a contract provision which was gradually strangling the company's Erie production and reducing the number of jobs available. This was the provision which permitted employees, however unskilled or untrained, to "bump" other at-work employees from their jobs. This "bumping" caused little hardship when Erie Resistor was a small company with simple product lines and little competition. With today's highly complex products and keen competition for customers, unrestrained large-scale "bumping" had created problems of re-training which were making it impossible to meet the price and delivery requirements of our customers.

Likewise, the Company had no choice but to refuse the Union's demand for a wage increase. The business of the Company in Erie had been such that more than 400 members of the bargaining unit have long been on lay-off and the most vigorous effort was needed to get enough orders to keep the 450 then-at-work members on their jobs.

A strike was the last thing in the world Erie Resistor wanted . . . or could afford. Between February 21 and March 31 Erie Resistor had 22 meetings with Union negotiators . . . the last of these a 26-hour talk which was still in session when Union officials called the strike. At that point, Federal and State mediators were called in to help speed the end of the strike. From April 1 to June 5, nineteen meetings were held with the able and skilled help of these experienced mediators.

On June 5th . . . after the employees, the Community and the Company had suffered nine long weeks of strike . . . Local 613 and Company negotiators reached agreement on all issues which were present at the beginning of the strike.

The significant point is that these same terms were available to the Union long before March 31st. If their acceptance required nine weeks of debate,

consequences were thoroughly discussed in negotiation meetings of May 6 presided over by the Federal Mediator.

By accepting on May 6 the proposals it DID accept on June 5, Union negotiators could have spared Union members and the Company all of the problems that have arisen since then.

Instead, on the morning of May 7, there was mass picketing and violence, in flagrant violation of the specific order of the court. Individuals who had expressed a desire to come to work, were threatened . . . in a letter from the Local 613 president . . . with fines, suspension or expulsion. There was a sharp increase in actual and implied threats . . . and in violence against the persons and properties of those who had come to work or who had made known their desire to do so. Rightly or wrongly, these deliberate acts of terrorism were regarded by the individuals involved as instruments of the Union leaders' policy. Certainly, they discouraged the legal right of free choice for many individuals who wanted to come to work.

At the same time, Union spokesmen issued frequent public statements that negotiations were "only inches away from settlement." Whether these statements were made in good faith, only the Union leaders can say. Certainly, they could have accepted . . . before March 31st or any time thereafter . . . the same proposals they DID accept on June 5. The timing of these "inches away" announcements, however, strongly suggests that they were deliberately designed to discourage members from returning to work. In essence, they asked anyone who wanted to come to work, "Why risk bad trouble for a few days' pay?"

Under these circumstances the Company had no choice but to exercise its legal right to assure employees that coming to work of their own free choice WOULD mean more than a "few days' pay" . . . that the end of the strike would NOT mean the end of their jobs. The Company has given that assurance to all who have come to work under these circumstances AND IT WILL CONTINUE TO DO SO in good faith within its legal rights.

3. Out of respect for the personal rights of employees now at work, the Company can no longer make Union membership a requirement

*General Counsel's Exhibit 5D.***General Counsel's Exhibit 5 D**

Erie Morning News, Wed., June 17, '59

RESISTOR, UNION TO MEET JUNE 23

Representatives of Erie Resistor Corp. management and the striking Local 613, International Union of Electrical Workers (AFL-CIO) are reported "still far apart" on three remaining issues which are preventing settlement of the 76-day-old strike following an all-day negotiating session Tuesday.

Another meeting will be held June 23 between union and management officials with Federal mediator, Grover Stainbrook and State Mediator Michael Prime.

CLASSIFIED DISPLAY

CLASSIFIED DISPLAY

WOMEN WANTED

. . . for steady work in good surroundings. Liberal wages, pensions and other fringe benefits. No previous experience required. Opportunity to learn and earn on the job. Applicants should be over 18 years of age, with high school education. Interviews will be conducted at our downtown office. For appointment, phone 4-1382 mornings from 9 till noon.

ERIE RESISTOR CORPORATION

General Counsel's Exhibit 6.

General Counsel's Exhibit 6

ERIE RESISTOR CORPORATION

*Pioneers in the Development of Electronics
and Plastics*

644 West 12th Street, Erie, Pa.

Phone 2-1481

June 10, 1959

**To All Employees of Erie Resistor Corporation
and Members of IUE Local 613**

On March 31 the officials of Local 613 IUE called a strike at the Erie Resistor Corporation. Today, nine weeks later, they continue this strike.

On June 5 all the issues which had caused the strike were settled on basically the same terms that the Company had offered prior to March 31. Nine weeks of lost wages for what?

Now only the issues caused by the Union officers' conduct of the strike remain to be settled. These too can be resolved without another day's lost wages.

Five members of Local 613 have committed unprovoked assaults on their fellow employees. One woman chased a young girl half a block and then struck her. One man knocked one Company official to the ground and then struck another official when he attempted to intervene. This sort of conduct cannot be condoned on the picket line or elsewhere, strike or no strike. Hence, the

General Counsel's Exhibit 6.

five employees involved have been discharged. The Union negotiators insist that these former employees be re-hired. They have also appealed to the National Labor Relations Board in an attempt to have it order reinstatement of these employees. The Company has agreed to abide by the decision of the Federal authorities. Yet the Union leadership is unwilling to accept whatever the government decides. The Union insists on continuing the useless strike to enforce its demands for reinstatement of these five discharged employees.

Violence on the picket lines and threats by some Union officers against those who wished to exercise their legal and moral right to come to work have intimidated and coerced these men and women. The Company had a duty to its employees, to its customers, to its stockholders, and to the community to resume full production. In order to get employees to withstand such threats and coercion by some Union officials, it was necessary to grant non-strikers assurance that they would not be thrown out of work when the strike ends. In order to make such an assurance it became necessary to grant each employee affected sufficient seniority to protect him or her against the severe cut-back which is expected following the conclusion of the strike. Under these circumstances, the people who come to work . . . as is their legal and moral right . . . are entitled to some assurance that their jobs will not end when the strike is settled. The granting of additional seniority is an accepted method of providing job assurance; this policy will continue to apply to all who come to work under these circumstances. Since this useless strike has caused the loss of many orders, an employee will need in the

General Counsel's Exhibit 6.

neighborhood of twenty years seniority to be assured a job during the weeks which follow the strike.

Had the Union not used coercion, violence and threats, this offer of additional seniority protection would not have become necessary. But even this issue need not cause the continuation of a useless strike. Again the Union has appealed to the National Labor Relations Board and again the Company will abide by the ultimate rulings of the Federal Government. Is the Union afraid to trust the United States Government? Would it prefer to rely on the effects of a useless strike?

Lastly, the Union leaders choose to continue the strike to enforce their demands for a Union Shop. A Union shop means one where every employee must belong to the Union in order to keep his job. The Union has abused the privileges of a Union shop by using it as a threat. By letter, it has threatened to fine, suspend or expel any member who exercises his or her own free choice to come to work. It has suggested that under the Union shop anyone so expelled will be discharged. This sort of illegal abuse of Union shop apparently can be prevented only by denying the Union the weapon of Union shop.

Obviously the Company cannot agree to any such illegal plan to fire people just because they choose to work. This issue, too, need not continue a useless strike. If the Union truly represents the desires of the employees, then the loss of the Union shop should not mean the loss of any members. On the other hand, if some employees do not wish to be forced into the Union, the Union has only its past conduct to blame. If the Union

General Counsel's Exhibit 6.

and its members feel that forcing all employees into the Union is worth continuing this useless strike, that is their privilege.

There has been able direction by federal and state mediators through these negotiations. The mediators are men of experience and know-how in these matters so vital to us all. Your Company believes their continued handling of any future negotiations is in the intelligent best interests of all concerned.

From the very beginning of the contract talks, your Company has made every effort to avert a strike and will continue to work for an equitable settlement.

Yours very truly,

ERIE RESISTOR CORPORATION

G. RICHARD FRYLING

G. Richard Fryling, President

General Counsel's Exhibit 7.

General Counsel's Exhibit 7

ERIE RESISTOR CORPORATION

*Pioneers in the Development of
Electronics and Plastics*

644 West 12th Street, Erie, Pa.

Phone: 2-1481

May 3, 1959

To all members Erie Resistor Corporation
Local 613 I.U.E. C.I.O.:

We have written you on several occasions. We have done our best to keep you informed.

We have bargained in good faith for months to try to solve the situation brought upon all of us by the Union. We tried to find a way for you to continue to work and get your regular pay. This could have been done even while we negotiated—but during negotiations the Union pulled you off your job at the stroke of midnight at the contract's expiration on March 31st.

Now we want to tell you that it is our duty to you, to our customers, to our stockholders, and to our community, to return the company to full production without further delay. The law provides that the company may fill the job of a striker with a permanent replacement. Permanent replacement means an end to the job and job rights of the employee replaced.

We want to inform you that starting May 7th we are going to obtain replacements. You will have your right to your job only until you are replaced but not after that.

General Counsel's Exhibit 11.

Whatever decision you make to exercise your rights to a job is your own. We cannot and will not tell you what you ought to do. But we tell you what we must do to save our business and that is to return to full production.

Very truly yours,

G. RICHARD FRYLING,

G. Richard Fryling, President

ERIE RESISTOR CORPORATION

General Counsel's Exhibit 11

626 B June 26, 1959

We hand you herewith the Company's proposal of June 25, 1959. We were about to submit this to you when we received your telegram at 3:30 P.M. Obviously, Points 7 and 8 are no longer relevant. The remaining points state the Company's present position.

In answer to your wire of June 26, 1959, we must reiterate that these striking employees eligible for reinstatement will be called back, not jointly, but by the Company in an orderly manner as business warrants.

It must be further understood that employees will return to work without a contract. Until such time as a final contract is agreed to by both parties, there are no final agreements on any issues. The Company will, of course, continue to be fair to all returning employees as evidenced by the treatment accorded to those already back to work.

General Counsel's Exhibit 11.

The Company received notice of your termination of the strike at 3:30 P.M., June 25th, and considers that hour as the end of the strike.

COMPANY'S PROPOSAL

June 25, 1959

We reject the Union's package proposal of June 24th. In return we make the following package proposal.

1. Agreement on Maintenance of Membership.
2. The Company will continue its replacement policy announced May 27, 1959 and reserves all of its legal rights to sustain this policy.
3. The people who have been replaced have lost all status as employees and will *not* be given lay-off status.
4. In a serious effort to bring about a settlement of the strike the Company offered a compromise proposal concerning the five discharged employees. Since the Union has rejected and ridiculed this offer as unfair, discriminatory and inadequate, the Company now withdraws this compromise proposal and takes the position that these five individuals are all permanently discharged.
5. The Company will give the Union a list of those former employees who have been replaced to date. To the extent possible we will furnish a list of those whose jobs have been discontinued.

General Counsel's Exhibit 11.

6. The Company is willing to accept the Union's offer to terminate the strike and stop picketing. Once the strike is terminated and employees are free to come to work without fear of reprisal the reason for granting returning employees additional seniority will be over. Therefore in response to the Union's request the Company agrees not to give additional seniority to those coming back after such termination. Those employees already working when the strike ends will continue to have the job security granted to them when they came to work.
 7. We can not agree to a moratorium pending termination of the strike. It is essential that the Company continue to move toward full production.
 8. The Company reminds the Union that the Union can end the strike at any time . . . even without a contract . . . and return to work those of its members still entitled to available jobs.
-

*General Counsel's Exhibit 12.***General Counsel's Exhibit 12****REPLACEMENT POLICY AND PROCEDURE****May 27, 1959**

Permanent replacement of former bargaining unit employees who are on strike will take place as follows:

1. Replacements will be made by Job Classification within a department commencing with the least senior employee on the job classification needed to meet production requirements in the department concerned.
2. All replacements will be hired to fill help requisitions that are filed in the Personnel Department's Employment Office.
3. All new hires will become permanent replacements.
4. All bargaining unit employees who were at work on March 31, 1959 and who present themselves for employment prior to the settlement of the strike will be reinstated in their former job classifications and departments provided the job is still available or they have not been permanently replaced.
 - (a) In the event the former job no longer exists, such employees will be assigned to other suitable and available work for which they are qualified as permanent replacements.
 - (b) In the event the employee has been permanently replaced, then they will be considered as an applicant for available work and if they are rehired they will be assigned to suitable and

General Counsel's Exhibit 12.

available work for which they are qualified as permanent replacements.

5. All employees who were on lay-off on March 31, 1959 and who present themselves for work and are accepted, will be given any available job for which they are qualified.
6. All new hires, rehires and returned employees described in 3, 4 and 5 above will have twenty (20) years added to their regular length of service seniority date. Such special seniority consideration shall be used only in case of lay-off and recall from lay-off.
7. In all other respects such as promotions, vacations, Pension, etc., such employee's special seniority less twenty (20) years shall apply.

GORDON D. FERRELL

Director of Industrial Relations

GDF/as

before... the last of these a 40-hour week which was only in session when Union officials called the strike. At that point, Federal and State mediators were called in to help speed the end of the strike. From April 1 to June 3, nineteen meetings were held with the able and skilled help of these experienced mediators.

On June 5th... after the employees, the Community and the Company had suffered nine long weeks of strike. Local 613 and Company negotiators reached agreement on all issues which were present at the beginning of the strike.

The significant point is that these same terms were available to the Union long before March 31st. If their acceptance required nine weeks of debate, these discussions COULD have continued with everyone still profitably at work under a contract extension.

NOW, NEW ISSUES HAVE ARISEN

Now, unfortunately, the Union's conduct of the strike has created NEW issues that did not exist on March 31... issues arising out of the length of this useless strike and from the violent acts of certain Union members.

Because the total Erie Community suffers in the loss from this strike, all of you are entitled to know about these new issues. There are three of them:

1. Five Union members have been discharged for specific acts of violence against other employees. Union negotiators insist that these employees be reinstated. The Company believes that acts of violence during a strike should be dealt with precisely as they have been at all other times... that the harm done to the individuals assaulted was no less painful, humiliating and intimidating than it would have been during normal, law-abiding times.
2. Employees who have chosen to come to work during the strike... as is their legal and moral right... have been assured by the Company that they would not be fined or otherwise penalized by the Union and that their jobs would not end with the settlement of the strike. The Union now asks that the Company withdraw any measure of additional job security for replacement employees. Yet, by its own actions, the union made it necessary for the company to accept replacement workers and to assure these workers some degree of job security.

The Company's urgent need and legal right to resume full production were fully explained to all Local 613 employees in our public letter of May 3. The subject, and its

asked anyone who wanted to come to work. Why risk bad trouble for a few days' pay?

Under these circumstances the Company had no choice but to exercise its legal right to assure employees that coming to work of their own free choice WOULD mean more than a "few days' pay"... that the end of the strike would NOT mean the end of their jobs. The Company has given that assurance to all who have come to work under these circumstances AND IT WILL CONTINUE TO DO SO in good faith within its legal rights.

3. Out of respect for the personal rights of employees now at work, the Company can no longer make Union membership a requirement for employment in bargaining unit classifications at Erie Resistor. Union negotiators continue to insist upon automatic Union membership as a condition for keeping a job at Erie Resistor. Whether intentionally or otherwise, the Union has created a fear among many presently working employees that the "Union Shop" would be used as a weapon against them. Others now working feel that the Union has done a disservice to ALL employees in calling and prolonging a strike which has hurt everyone and helped no one. There is evidence, also, that Union leadership has blatantly used the power of "Union Shop" unfairly... as a weapon of fear and intimidation.

The Company has a moral obligation to respect the wishes of those who do NOT choose to be Union members... just as it willingly respects the right of those who DO.

The Company has proposed a Maintenance of Membership arrangement which would give the Union complete freedom to work sincerely in behalf of its members, and to enroll as many more as its good performance and salesmanship could attract.

HOW MANY OF THESE THREE STRIKE-CREATED "ISSUES" CAN BE INFLUENCED BY PROLONGING THE STRIKE?

Whether the strike ends tomorrow or a month from tomorrow, only the last of these three "issues" (Union Shop vs. Maintenance of Membership) need be the subject of further discussions between Union and Management negotiators.

The Union has appealed to the National Labor Relations Board, to reinstate employees discharged for acts of violence, and to revoke the Company's assurance of job security for employees who come to work during the strike. Both the Union and the Company are now bound to accept the ultimate decisions of the federal authorities on these two points and those decisions will be just as binding and just as inclusive whether we ARE or ARE NOT working together while they are being reached.

That leaves, then, only the question of Union Shop to excuse further delay in the Union's settling the strike.

Can it be that leaders of Local 613 are so unsure of their services to members that they must depend upon compulsory membership to hold their power? Or do they still plan to use "Union Shop" as a club to punish those who have dared to think for themselves? In either case, these are sorry reasons to keep workers on strike while with every passing day the Erie Community and Erie Resistor strikers sustain mounting losses.

G. Richard Fryling

JUNE 14 1959

President

ERIE RESISTOR CORPORATION

ERIE RESISTOR CORPORATION

Erie, Pennsylvania

*General Counsel's Exhibit 13.***General Counsel's Exhibit 13****REPLACEMENT POLICY & PROCEDURE****JUNE 15, 1959**

The Replacement Policy & Procedure announced May 27, 1959 is hereby amended as follows:

- 4 (B) Add thereto the following "All employees who have been replaced and who desire assignment to other work will fill out the attached statement of qualification."

8. Add paragraph 8 as follows:

"8." In the collective bargaining sessions, the Union has objected to the grant of 20 years seniority as provided in paragraphs 6 & 7 of our policy announced May 27, 1959. The Company has therefore offered to substitute the same seniority heretofore enjoyed by Union Officers as set forth in paragraph 18 of the collective bargaining agreement dated April 8, 1957. If the Union agrees, this type of job assurance will be substituted for the 20 year plan. If no agreement on this issue is forthcoming, the 20 year plan will be followed.

General Counsel's Exhibit 1.

CLASS OF SERVICE
 1. A fast message
 unless it is delayed; hap-
 piness is built into the
 people's service.

WESTERN UNION

TELEGRAM

W. P. MARSHALL, Editor.

SYMBOLS	
DL	Day Letter
NL	Night Letter
LT	Letter Telegram

12.0
00 11 94

• PB175

1. F. ERA272 LONG PD=ERIE PENN 25 120PVC
2. G. RICHARD FRYLING, PRES ERIE RESISTOR CORP.
644 WEST 12 ST ERIE PENN.

6-25 A
2-17

THIS TELEGRAM IS FORMAL NOTICE TO YOU THAT LOCAL 617
THE AFL CIO HAS TERMINATED THE STRIKE AS OF 530PM
WEDNESDAY JUNE 24 1959 THIS TELEGRAM ALSO IS FORMAL
NOTICE TO YOU THAT ALL STRIKING EMPLOYEES BE READY
WILLING AND ABLE TO RETURN TO WORK AND DESIRE
RE-INSTATEMENT IN LINE WITH THEIR SENIORITY AS PER
THE AGREEMENT REACHED WITH YOUR REPRESENTATIVES THE
LOCAL FURTHER REQUESTS THAT TALKS BE RESUMED
IMMEDIATELY TO SETTLE THE ONE ISSUE REMAINING
UNRESOLVED.

EDWARD F BORDONARO PRES LOCAL 61 IUF AFL CIO...

General Counsel's Exhibit 15.

General Counsel's Exhibit 15

June 25, 1959

Local 613 IUE AFL CIO

Edward F. Bordonaro, President

We welcome your notification received at 3:30 P.M. today that Local 613 IUE has decided to terminate the strike against Erie Resistor Corporation, and we accept your assurance that the strike is terminated without a contract.

We understand that the agreement referred to in your wire is simply that we will furnish you with a list of those persons who have been replaced and a list of those jobs which have been discontinued, and that we will call back to work those still eligible for jobs in an orderly fashion and as promptly as business warrants. This we agree to do.

G. Richard Fryling, President
ERIE RESISTOR CORPORATION

*General Counsel's Exhibit 21.***General Counsel's Exhibit 21**

Tuesday, May 12, 1959—7:00 A. M.

In the negotiation meeting Monday night, the Union's proposals showed that they continue to have no serious regard for the basic problems of the Company.

On job selection and seniority, the union made no new proposals that would eliminate the musical chairs type of bumping.

On freezing of seniority of quality control inspectors who are promoted out of the bargaining unit, the company will not sell these employees "down the river". The Union's offer to establish a fact finding board to determine if this question should be arbitrated, does not solve this problem of human rights.

In their counter-proposal for a wage reopening in November, Local 613 wants the right to either strike or to submit the question to arbitration. This subject is basic to the management of any business and cannot be delegated to any 3rd party who is both the judge and the jury.

Thank you for calling.

ERIE RESISTOR CORPORATION

Thursday, June 25, 1959

We are happy to report that the 85 days-old IUE Local 613 strike against Erie Resistor has ended. Edward F. Bordonaro, president of Local 613, in a telegram to Resistor president G. Richard Fryling, announced that the Local has terminated its strike against the

General Counsel's Exhibit 22.

Company, and that the employees will return to work without a contract. There is one issue remaining unsettled, that of the five discharged employees.

All employees who were at work Thursday are to report for work Friday at their regular times. Those employees who have not previously returned to work will be notified individually when to report for work, and should not return until they have been notified. Those still eligible for work will be called back as promptly as business warrants.

Thank you for calling.

General Counsel's Exhibit 22**ERIE RESISTOR CORPORATION**

Wednesday April 8, 1959

Statement of Company's Position

Before Federal Mediator Grover Stainbrook

1. The Company's basic objective in these negotiations has been to try to provide an operating climate that will permit us to keep and provide more jobs in Erie.
2. We have explained our business and operating problems to the Union officials.
 - (1) Fluctuations in our business cycle are beyond our control because we are a manufacturer's supplier of component parts.
 - (2) We must compete for customer orders in a highly competitive market where dollar value,

General Counsel's Exhibit 22.

quality, quantity, delivery and service are all of vital importance.

- (3) Our product diversification requires a great variety of specialized training and work experience. The constant movement and retraining of employees under such conditions is cumbersome, costly, unprofitable, non-competitive and unrealistic.
3. We must have relief from this game of "musical chairs" if we are to continue to stay in Erie and provide jobs on a profitable basis.
4. We can neither continue some of our present product lines nor add new product lines under these unrealistic conditions.
5. We have tried to arrive at a workable system which would minimize the movement of employees from job to job or chair to chair and thereby give us the stable and experienced work force we must have if we are to stay in business on a competitive and profitable basis.
6. The Company was determined to get such a change, if we could, without resorting to a strike. In an eleventh hour effort to reach an agreement the Company reluctantly offered the Union a package deal whereby the Company agreed to drop its proposals and to continue the provisions of the old contract on Sections 6, 8, 11, 12, 13, 14, 15, 16, 33, 42, 44, 45, 48, 61 and 62 providing the Union would likewise drop its remaining proposals.
7. In reply, the Union agreed to continue the provisions of the old contract on Sections 11, 12, 13, 14,

- 15, 16, 42, 44, and 45. The Union then asked for further consideration on Sections 6, 8, 33, 48, 61, 62, safety glasses and a wage increase of 9¢ per hour.
8. In an all night marathon session the Company made still further concessions on Section 33, 61, and made an offer on Section 48 in an effort to reach an agreement.
9. The Union finally took a firm unyielding position on the remaining issues:
- (1) A wage increase
 - (2) Limiting of sub-contracting (Section 6)
 - (3) Freezing of seniority for Q. C. Inspectors (Section 8)
 - (4) Three weeks vacation after 10 years (Section 48)
 - (5) Company to pay any additional cost of group insurance (Sec. 62)

10. Summary:

The Company's objective is to keep jobs in Erie if at all possible but this can only be done by solving the basic problem of providing the kind of operating climate that is necessary in order for us to compete on a profitable basis.

The Union has called this strike over issues which the Company cannot accept.

The Company is willing to cooperate with the Mediator and to explore any proposals which will lead to a mutually agreeable settlement.

GORDON D. FERRELL

Director of Industrial Relations

General Counsel's Exhibit 25.

General Counsel's Exhibit 25

ERIE RESISTOR CORPORATION

*Pioneers in the Development of
Electronics and Plastics*

644 West 12th Street, Erie, Pa.

Phone: 2-1481

May 14, 1959

TO ALL MEMBERS OF LOCAL 613 I.U.E. (A. F. L. - C. I. O.)

Many of you have told us that you would like to return to work but are afraid of the fines or excessive dues which may be levied against you by the Union.

We understand that some of you have been told by Union officials that those who return to work will be fined or have their monthly dues increased. We know also that several members now working have received a letter from Edward Bordonaro, Local 613 president, stating:

"In crossing the picket lines, the fruits of your labor will be wiped out and a fine will be levied."

THESE ARE MERE THREATS! Under the Taft-Hartley law, your only requirement is to pay the periodic dues uniformly required of ALL members,

In summary, these are the legal facts:

1. It is your legal right to return to work, if you want to. It is your legal right to refrain from returning to work, if you want to.
2. The Union cannot cause your discharge now or later . . . because you return to work.

General Counsel's Exhibit 25.

3. You cannot be required to pay any more dues than any other member of Local 613. You cannot be required to pay a fine to keep your job. If the Union asks the Company to discharge you for not paying a fine or paying excessive dues, the Company will refuse to do so and the Union will be charged with an unfair labor practice.

Whether you decide to return to work or not is your own decision to make. Under the law neither the Company nor the Union can coerce, threaten, or otherwise pressure you into making up your mind.

Very truly yours,

ERIE RESISTOR CORPORATION

G. RICHARD FRYLING

President

*General Counsel's Exhibit 26.***General Counsel's Exhibit 26****ERIE RESISTOR CORPORATION**

*Pioneers in the Development of
Electronics and Plastics*

644 West 12th Street, Erie, Pa.

Phone: 2-1481

May 19, 1959

TO ALL MEMBERS OF LOCAL 613 I.U.E.:

Our negotiations with Local 613 I. U. E. seemingly have come to a standstill. Monday produced no progress whatsoever toward settlement of the strike. No future meetings between Company and Union are scheduled. At this writing there are still unresolved such items as accumulation of seniority (Section 8); wage reopener; seniority plan (Secs. 11, 12, 13, 14, 15); discharged employees and legal actions. We are no closer today than we were sometime ago on several major issues and unfortunately, new issues arise out of changing conditions due to the continuance of the strike.

For example, your Company takes a firm stand with regard to replacement workers:

Employees who come back to work will not be discharged because they have crossed picket lines. The Union cannot later force your discharge if you cross a picket line, a fact which can be checked by getting in touch with the National Labor Relations Board in Pittsburgh, Pa. The Company will protect the job rights of employees who are now working and who are now returning to work.

General Counsel's Exhibit 26.

Meanwhile, what little job security still remains for us all at Erie Resistor in Erie is being maintained by those employees, both union and non-union, who are coming to work every day.

I hope that all of you understand fully that your Company's last proposal on seniority is one which affords you the protection you want. The Company's plan to end "musical chairs" bumping does *not* take away your seniority. Under the Company's proposal, the reduction of an employee in any existing department would result in the layoff of the least senior employee in the whole bargaining unit. . . . the same as under the old arrangement. The only difference is that the new plan limits to two or three, the dozens of job shifts that used to take place to accomplish the same end.

Whether these issues are grave enough to justify the paydays you have been missing is a decision which only you can make. Whether you return to work *now* or await the ending of this strike is, likewise, a matter which you must decide for yourself.

Sincerely yours,

G. I. RICHARD FRYLING
President

*General Counsel's Exhibit 27.***General Counsel's Exhibit 27****July 17, 1959****SETTLEMENT AGREEMENT**

In addition to the provisions of the Labor Agreement of July 17, 1959, it is further understood and agreed that the following shall also be effective from this date forward:

1. The Company's replacement and job assurance policy to be resolved by the NLRB and the Federal Courts and to remain in effect pending final disposition.
2. No dispute arising out of the Company's replacement and job assurance policy nor any dispute which arose prior to the signing of the Labor Agreement is to be subject to the grievance or Arbitration procedure.
3. Superseniority for Union Officers and Stewards applies only to those who are employees of the Company unless resolved otherwise per item I above.
4. Val Skiba and Edward Karpinski are to be reinstated after a thirty-day disciplinary lay-off beginning June 29th and there is to be no further discussion in the cases of Burin, Grafius and Gilson now or at any future time.
5. Employees who are not now at work and who are out of seniority order, because their jobs were eliminated during the strike, will be considered as bidders on all posted job openings

until such time as they have all been returned to work. It is assumed that all such employees will be placed by August 3, 1959.

6. All jobs in frozen departments will be posted per the Labor Agreement on August 3, 1959.
7. The Company and the Union, its officers, agents and members, agree not to discriminate against any employees because of the exercising of their right to work or not work during the strike.

Signed this 17th day of July, 1959.

For the Union, Local 613, IUE, AFL-CIO

EDWARD F. BORDONARO

EDWARD L. KARPINSKI

SAMUEL FARGIORGIO

For the International Union:

WILLIAM W. COX

For the Company:

GORDON D. FERRELL

LEWIS J. SHIOLENO

G. M. SCHAU

General Counsel's Exhibit 28.

General Counsel's Exhibit 28

ERIE RESISTOR CORPORATION

Maintenance of Membership

August 11, 1959

The following information is being posted to clarify the Maintenance of Membership provisions of the Labor Agreement.

1. You need not be a member of the Union as a condition of employment.
2. If you are now a member of the Union and wish to remain one, you need only to continue to tender your periodic dues.
3. You may become a member of the Union at anytime during your employment by signing an application for membership, paying an initiation fee and tendering monthly dues.
4. If you are now a member of the Union and wish to resign, you must do so before August 17, 1959, otherwise, you must remain a member in good standing for the duration of the Labor Agreement to March 31, 1960.
5. Those wishing to resign during this escape period must notify the Union and the Company in writing. This may be done by simply completing a notice of resignation card which may be obtained from your Foreman or Operation Manager. To complete the card (see attached sample) fill in the date, your signature and clock number, then mail the top half of the card to Local 613 IUE, AFL-CIO and give the

General Counsel's Exhibit 28.

lower half of the card to your immediate Supervisor who will forward it to the Payroll Department.

GORDON D. FERRELL

Director of Industrial Relations

GDF/as Approved For Posting
 Personnel Department
 Erie Resistor Corporation

Date.....

International Union of Electrical, Radio
 and Machine Workers, AFL-CIO, Local 613
 531 French Street
 Erie, Pennsylvania

I hereby tender my resignation from membership in the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 613 and hereby revoke my existing check-off authorization, both to become effective immediately.

Signature.....Clock No.....

Date.....

Paymaster,
 Erie Resistor Corporation:

I hereby tender my resignation from membership in the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 613 and hereby revoke my existing check-off authorization, both to become effective immediately.

Signature.....Clock No.....

General Counsel's Exhibit 34.

General Counsel's Exhibit 34

**INTERNATIONAL UNION OF ELECTRICAL,
RADIO & MACHINE WORKERS, AFL-CIO**

**Affiliated With the American Federation of Labor and
Congress of Industrial Organizations**

**Local 613
531 French**

[SEAL]

**Phone 2-6093
Erie, Penna.**

May 6, 1959

Dear Sister:

You have been approached because we have been informed that you are a scab.

We would like to impress upon you the penalties involved as prescribed in our Local's Constitution and Bylaws which states:

ARTICLE 22, Section 9: Members may be fined, suspended or expelled for any of the following acts hereinafter provided: (1) Working for or in an establishment which is on strike; and (2) Working as a strike breaker or violating the adopted standards as to wages, hours, or working conditions.

Section 10: Any member who refuses to perform the duties requested of him during a strike conducted by the Local Union by the appropriate authority may be fined, suspended or expelled from the Union. Any member who after strike action has been voted in accordance with the provisions, by majority action of this Constitution attempt to disrupt or demoralize members of the Union may be fined, suspended or expelled from Local 613.

General Counsel's Exhibit 35.

In crossing the picket line, the fruits of your labor can be wiped out and a fine will be levied, the amount of which is set by the Executive Board of Local 613, IUE-AFL-CIO.

Fraternally yours,

LOCAL 613, IUE-AFL-CIO

EDWARD F. BORDONARO

Edward F. Bordonaro

President

iue afl cio

General Counsel's Exhibit 35

May 28, 1959

RECALL TO WORK AFTER STRIKE

The Company shall recall employees in such number and at such times as it deems practical and economical to supplement its production and maintenance work force scheduled or working on the date of the execution of this contract.

All employees working at the time of the execution of this agreement shall be deemed to have their regular length of service seniority plus twenty (20) years.

This seniority consideration shall be used only in case of lay-off and recall from lay-off.

The Seniority Sections of the contract shall apply to all other bargaining unit employees with the exception as stated above.

General Counsel's Exhibit 41.

General Counsel's Exhibit 41

Bes. No. R-182

July 1959

CHRONIC

LABOR SURPLUS

AREAS

. . . experience and outlook

**An Analysis of Recent Labor Market Developments and
Employment Outlook in Chronically-Depressed Areas
and Other Areas with Relatively Heavy Unemployment.**

U. S. DEPARTMENT OF LABOR

JAMES P. MITCHELL, Secretary

BUREAU OF EMPLOYMENT SECURITY

Robert C. Goodwin, Director

Washington 25, D. C.

Office of Program Review and Analysis

Louis Levine, Assistant Director,

Bureau of Employment Security

**This study was prepared by Harold Kuptzin, Chief,
Branch of Labor Market Studies of the Division of Labor
Market and Manpower Studies, Gladys F. Miller, Chief
under the general direction of Lazar M. Paves, Deputy
Assistant Director for Manpower Studies and Research
Development. Charts and layout were prepared by
Evelyn Eckert, Bureau Illustrator.**

* * * * *

Labor Market Situation in the Erie, Pennsylvania Area

Area Description and Economic Characteristics: The Erie labor market area includes all of Erie County located in northwestern Pennsylvania on the south shore of Lake Erie. The area's 1950 population was 219,400. The city of Erie, the area's principal population center, had 130,800 inhabitants in 1950. No other community in the area had more than 10,000 residents at that time.

Erie is basically a hard goods manufacturing center, with the bulk of its factory production concentrated in metal working industries. Manufacturing employment totaled 34,200 in March 1959, representing nearly one-half (47.2 percent) of the area's 72,500 nonfarm wage and salary workers. Over three-fourths of the local factory workers were employed in durable goods industries—principally in machinery and transportation equipment (13,100 workers in March 1959), primary metals (4,300) and fabricated metal products (4,100). Employment in the machinery-transportation equipment group is down sharply (42 percent) since May 1950, when this industry provided jobs for 22,500 area workers. Locally significant non-manufacturing industries in Erie include trade (13,500 workers in March 1959), service (8,300) and government (6,900).

Nature of Unemployment Problem: Unemployment in the Erie labor market area has been at relatively high levels for most of the period since the end of the Korean conflict. Employment in this area reached an all-time high of 86,300 in May 1953, but dropped back very sharply (by about 10,000) in the following two years because

of sizeable cutbacks in refrigerators, freezers, and air conditioners, accompanying a changeover in the type of production at one of the area's leading industrial plants, and the transfer of refrigerator production and related activities to an out-of-area location. Local employment conditions improved to some extent in late 1956 and early 1957, and the area was placed in a moderate labor surplus classification between July 1956 and July 1957. Unemployment in the area began to rise again in late 1957, and averaged about double the national rate during 1958. In March 1959, some 15,300 local workers, representing 15.4 percent of the area's labor force, were unemployed—a jobless ratio close to two and one-half times the country-wide average of 6.4 percent. Skilled and semi-skilled workers, most with previous industrial experience, made up about 40 percent of the area's jobless rolls.

Recent Labor Market Developments: Employment declines in the Erie area during the recent business recession were considerably sharper than in the Nation as a whole. Local nonfarm employment totals in March 1958 were 9.4 percent below the March 1957 level—approximately two and one-half times the national average decrease of 3.7 percent for the same period. Area cutbacks were concentrated primarily in durable goods industries, particularly in machinery and transportation equipment (locomotives) and in primary and fabricated metals. Area employment totals continued to decline during the year ending March 1959, despite a slight pickup in the closing months of the period. As a result, March 1959 nonfarm employment in Erie was 2,100 (-2.8 percent) lower than a year earlier and 9,800

(-11.9 percent) below that of March 1957. Overall job losses since May 1950 totaled 7,600 workers, or 9.5 percent. During this period, job totals in the Nation as a whole have increased by 16.0 percent.

Erie, Pennsylvania

Unemployment in the Erie area decreased slightly—to 12.4 percent of the labor force—between Mid-March and mid-May 1959. Improvements were centered primarily in seasonal nonmanufacturing activities, although a number of factory industries also posted gains. Local employers have scheduled a further moderate pickup between May and September, with both factory and nonmanufacturing industries participating in the rise. Even if these increases materialize, however, area unemployment totals are expected to remain considerably above the national average. There are no known expansion plans beyond September which may significantly affect the area's long-term outlook.

General Counsel's Exhibit 41.

ERIE, PENNSYLVANIA AREA
SELECTED EMPLOYMENT AND UNEMPLOYMENT DATA
May 1950—March 1959

Item	Month and Year					Percent Changes			
	March 1959	March 1958	March 1957 (1)	May 1950 (2)	5/50- 3/59	Percent Changes			
						3/57- 3/58	3/58- 3/59	3/57- 3/59	
<i>Employment:</i>									
Nonagricultural									
Wage and Salary..	72,500	74,600	82,300	80,100	-9.5	-9.4	-2.8	-11.9	
Manufacturing ...	34,200	35,800	42,900	44,800	-23.7	-16.6	-4.5	-20.3	
Machinery & Transp. Equip.	13,100	14,400	19,300	22,500	-41.8	-25.4	-9.0	-32.1	
<i>Unemployment:</i>									
Number of Workers..	15,300	12,200	6,100	3,400	+350.0	+100.0	+25.4	+150.8	
Percent of Labor Force	15.4	12.4	6.2	3.6	

(1) Employment data adjusted to new SIC codes and March 1958 benchmarks.

(2) Employment data adjusted to new SIC codes.

Source: Pennsylvania Bureau of Employment Security (Unadjusted Data)

(Note: March 1959 data are preliminary.)

U. S. DEPARTMENT OF LABOR
Bureau of Employment Security

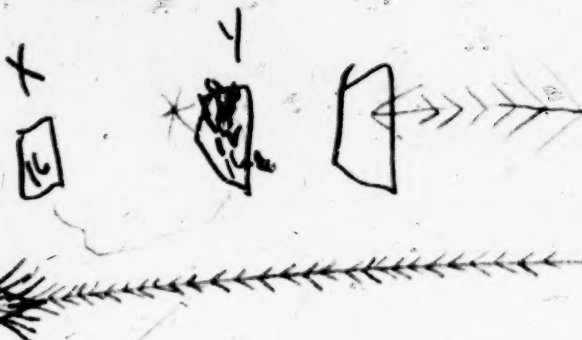
General Counsel's Exhibit 42

3

4

5/11

GC 42



Large group
 2-2-15-19

✓
 ✓ large + smaller layers discharge
 ✓ lenient proposals - freezing residents
 ✓ new operations, top + lead machines for
 6 months
 ✓ s/s. - no change

<and company admits that it can't be moved>

NATIONAL LABOR RELATIONS BOARD

Case No. 6 CA 1790

OFFICIAL EXHIBIT NO. 43

Deposition

Identified

Received

Reported

In the matter of Eric Resistor
 5/11/60 Witness mes Reporter mes

No. Page 60

Proceedings in the United States Court of Appeals for the Third Circuit	590	1
Petition for review of an order of the National Labor Relations Board in case No. 13,695	590	1
Petition for review and setting aside an order of the National Labor Relations Board in case No. 13,700	592	3
Motion for leave to intervene, ² in case No. 13,700 ..	596	5
Motion to consolidate cases	602	10
Order granting motion for leave to intervene and to consolidate cases, etc	605	11
Answer to petition for review in case No. 13695	606	12
Answer to petition for review and cross-petition for enforcement in case No. 13,700	608	13
Opinion, Smith, J	610	14
Judgment	620	22
Clerk's certificates (omitted in printing)	621	23
Order allowing certiorari	623	24

590 In United States Court of Appeals for the Third Circuit

No. 13695

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS, LOCAL 613, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*Petition for review of an order of the National Labor
Relations Board*

Filed August 1, 1961

To the honorable, the JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT:

International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO, pursuant to the National Labor Relations Act, as amended, (61 stat. 136, 29 USC, Section 141 *et seq.*) hereinafter called the Act, respectfully petitions this Court for the review of an order of the Respondent, National Labor Relations Board, hereinafter referred to as the Board, directing Erie Resistor Corporation, Erie, Pennsylvania, hereinafter referred to as the Company, to cease and desist from certain conduct and to take other affirmative action, but failing to order the Company to take certain other actions and to cease and desist from certain other conduct contended by Petitioner to violate the National Labor Relations Act, as amended. The proceedings resulting in said order are known upon the records of the Board as "Erie Resistor Corporation and International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO," Case No. 6-CA-1790.

1. Upon due proceedings had before the Board in said
591 matter on October 18, 1960, a Trial Examiner of the Board issued his intermediate report, in which he made findings of fact and conclusions of law and recommended that the Complaint issued against the Company be dismissed in its

entirety. Thereafter, upon exceptions filed by Petitioner and the General Counsel of the Board, the Board issued its decision and order on July 31, 1961, in which it reversed the recommendations of the Trial Examiner and issued its above described order. The decision and order of the Board are reported at 132 NLRB No. 51.

2. This Court has jurisdiction of this petition, which is brought by a party aggrieved by the final order of the Board, by virtue of Section 10(f) of the Act, as amended.

3. The findings and order of the National Labor Relations Board, to the extent that they failed to find additional violations of the Act, as amended, and to order the Company to cease and desist therefrom and to take additional affirmative action, are not supported by substantial evidence on the record before it or by applicable law.

WHEREFORE, the Petitioner prays that the Court take jurisdiction of the proceedings and of the questions determined therein, review the final order of the Board, and make and enter upon the pleadings, testimony, evidence and proceedings set forth in the transcript, a decree modifying the order of the Board and ordering the Company to cease and desist from additional conduct and take additional affirmative action, and requiring the Company, its officers, representatives, agents, successors, and assigns to comply therewith.

BENJAMIN C. SIGAL,
Philip Murray Building,
1126 16th Street, N.W.,
Washington 6, D.C.

(S) M. H. GOLDSTEIN,
22nd Fl., Market St. Nat'l Bank Bldg.,
Philadelphia 7, Pennsylvania.
Attorneys for Petitioner.

[File endorsement omitted.]

592 In United States Court of Appeals for the Third Circuit

No. 288

No. 13700

ERIE RESISTOR CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*Petition for review and setting aside an order of the National
Labor Relations Board*

Filed August 3, 1961

(In the matter of Erie Resistor Corporation and International
Union of Electrical, Radio and Machine Workers, Local
Union No. 613, AFL-CIO—Case No. 6-CA-1790)

To the honorable, the JUDGES OF THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT:

Your petitioner, ERIE RESISTOR CORPORATION, respectfully
represents as follows:

1. Petitioner is a corporation organized and existing under
the laws of the Commonwealth of Pennsylvania, and maintain-
ing its principal office in Erie, Pennsylvania, where it also
operates a manufacturing plant.

2. On July 31, 1961 the National Labor Relations Board,
under the caption of Erie Resistor Corporation and Interna-
tional Union of Electrical, Radio and Machine Workers,
593 Local 613, AFL-CIO, 132 NLRB No. 51, Case No. 6-
CA-1790, held that petitioner had violated Sections
8(a)(1), 8(a)(3) and 8(a)(5) of the National Labor Relations
Act, as amended, and ordered petitioner to cease and desist from
certain practices, to offer employment to and make whole cer-
tain employees or former employees, and post a notice set forth
as an appendix to the Board's order. Petitioner seeks to have
this decision and order reviewed and set aside.

3. This Court has jurisdiction under Section 10(f) of the
National Labor Relations Act, as amended, the events alleged
to be unfair labor practices having occurred in or near Erie,
Pennsylvania, within the Third Judicial Circuit.

4. Petitioner intends to rely upon the following points:

(a) The decision and order of the Board is not supported by substantial evidence upon the record considered as a whole;

(b) The decision and order of the Board will not effectuate the purposes of the Act;

(c) The Board's decision and order is not based upon any findings of fact adverse to petitioner, but is based entirely upon the proposition that any grant of additional seniority to employees replacing economic strikers, called "superseniority" by the Board, is *per se* unlawful, regardless of the circumstances or manner in which the grant is made, regardless of the lawful, economic and nondiscriminatory purpose of making such a grant, and regardless of the complete absence of any anti-union background or evidence of any other alleged unfair labor practice. The question presented by the decision and order is the legal question of validity of this *per se* theory, which petitioner alleges is erroneous and contrary to the law;

(d) As found by the Trial Examiner, and as disclosed upon the record considered as a whole, petitioner's sole purpose in adopting the so-called superseniority policy was economic, lawful and nondiscriminatory, and petitioner in every respect bargained in good faith and observed the provisions of the law. Under the law petitioner was guilty of no unfair labor practice;

(e) The Board erred in failing to adopt the findings and conclusions of the Trial Examiner in their entirety;

(f) The order of the Board is in any event unduly broad upon the basis of the record considered as a whole, and will not effectuate the purposes of the Act;

(g) Both the Trial Examiner and the Board erred in excluding evidence of violence and misconduct on the picket lines;

(h) The Board erred in concluding that there was an unconditional application for reinstatement on June 25, 1959.

WHEREFORE, petitioner prays that the said Decision and Order of the National Labor Relations Board be vacated and set aside, that the National Labor Relations Board be directed to dismiss its complaint against petitioner, and that the petitioner have such other and further relief as may be just and proper.

Respectfully submitted.

(S) JOHN G. WAYMAN,

(S) REED SMITH SHAW & McCLAY,
747 Union Trust Building,
Pittsburgh, Pennsylvania.

*Counsel for Erie Resistor Corporation,
Petitioner.*

Of Counsel:

IRVING OLDS MURPHY,
Gifford, Graham, MacDonald & Illig,
615 Masonic Building,
Erie, Pennsylvania.

Dated: August 1, 1961.

[File endorsement omitted.]

596

In United States Court of Appeals
for the Third Circuit

No. 13700

ERIE RESISTOR CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Motion for leave to intervene

Filed August 10, 1961

To the Honorable, the Judges of the United States Court of Appeals for the Third Circuit:

International Union of Electrical, Radio and Machine Workers, AFL-CIO, hereinafter called the Union, the charging party in the proceedings before the National Labor Relations Board, hereinafter referred to as the Board, which resulted in the Order now being challenged in this Court on petition for review filed by the Erie Resistor Corporation, hereinafter referred to as the Company respectfully moves this Court for leave to

intervene in accordance with Rule 18(6).¹ The grounds for this motion are as follows:

1. The proceedings before the Board began with a charge filed by the Union with the Regional Director for the Sixth Region of the National Labor Relations Board at Pittsburgh, Pennsylvania, alleging, in substance, that the Company violated § 8(a) (1), (3) and (5) of the National Labor Relations Act (U.S.C. Title 29, §-158(a) (1), (3) and (5)). After investigation of the Union's charge, the General Counsel issued a complaint, and a hearing in this matter was conducted by a Trial Examiner of the Board, who issued an Intermediate Report and Recommended Order dismissing the complaint in its entirety.

597 2. Subsequently, the Board issued the Decision and Order now challenged in this Court, in which the Board rejected some of the recommendations of the Trial Examiner and gave certain relief to the charging party by ordering the Company to cease and desist from certain conduct and to take other affirmative action, and approved other recommendations of the Trial Examiner denying some of the relief requested by the Union.

3. The Union, as the charging party, was, under § 102.8 of the Rules and Regulations of the Board (National Labor Relations Board Rules and Regulations, Series 7), a party to the proceeding.² It conducted itself at all times as such a party, and was so treated by the Company, the General Counsel for the Board, and by the Board itself. The record reflects that, as a party, the Union was served with a copy of the complaint issued by the Board, and with a copy of the Company's answer; it appeared at the hearing and exercised extensively its right to examine and cross-examine witnesses and to call witnesses.

¹ Rules of the United States Court of Appeals for the Third Circuit.

² "SEC. 102.8 Party. The term 'party' as used herein shall mean the regional director in whose region the proceeding is pending and any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under the act, any person named as respondent, as employer, or as party to a contract in any proceeding under the act, and any labor organization alleged to be dominated, assisted, or supported in violation of section 8(a) (1) or 8(a) (2) of the act; but nothing herein shall be construed to prevent the Board or its designated agent from limiting any party to participate in the proceedings to the extent of his interest only." [Emphasis supplied.]

Following the hearing before the Trial Examiner, the Union was served by the Board with a copy of the Board's Order transferring the case to the Labor Board, was served by the Company and by the General Counsel with copies of briefs submitted to the Trial Examiner, and, in turn, filed its brief with the Trial Examiner. Similarly, before the National Labor Relations Board, the Union filed exceptions to the Intermediate Report of the Trial Examiner, accompanied by an
598 extensive brief, and was in turn served by the General Counsel with copies of his exceptions and brief, and by the Company with a copy of its brief in support of the Intermediate Report.

4. The Trial Examiner's Intermediate Report recognizes the Union's status as a party to the proceedings, as does the decision of the National Labor Relations Board. The first paragraph of the Trial Examiner's report reads,

All parties were present and represented by counsel and were afforded opportunity to adduce evidence, to examine and cross-examine witnesses, to present oral argument and to file briefs. On July 25, all counsel filed briefs which I have fully considered.

The Board's decision likewise treats the Union as a party. It notes that the Union had filed exceptions to the Intermediate Report and formally granted the motion of the Union that the Board grant oral argument. The Union, the Company and the General Counsel were allotted equal amounts of time to present oral argument. Thus, throughout the proceedings, the Union has been not only a nominal party to the proceedings, but an active and participating party therein.

5. The Board's Order, *inter alia*, prohibits the Company from discriminating against striking employees and discouraging membership in, and refusing to bargain collectively with the Petitioner. It directs the Company to bargain collectively, to make whole and restore seniority to the strikers, and to take other affirmative action which the Board found would effectuate the policies of the Act.

6. The Board failed however, to order the Company to take certain other actions and to cease and desist from certain other conduct contended by the Union to have constituted violations of the National Labor Relations Act, and the complaint in these respects was dismissed. To obtain review of this aspect

of the Board's Order, the Union filed a petition for review of that Order in this Court at No. 13695.

7. Should the Company obtain from this Court the decree its petition seeks, viz., a decree setting aside the Order of the Board and dismissing the complaint, it would mean that the

Union would be deprived of the relief granted it by the Board Order without an opportunity to be heard by this Court on those issues unless this motion for leave to intervene is granted.

8. The Union recognizes that there is a conflict among the Circuit Courts of Appeal as to whether or not a charging party in a case in which the Board has sustained the allegations of the complaint, should be permitted to intervene in a judicial proceeding involving the review or enforcement of such order. We respectfully submit that the denial or intervention in such cases is inconsistent with the general scheme of § 10(f) of the Act (U.S.C. Title 29, § 160(f)) which grants judicial review, as a matter of right to "any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought".

9. Under this subsection, a person who files a charge is a "person aggrieved" if the Board's final order dismisses all or part of the allegations contained in the Board's complaint.³ Thus, the charging party, if unsuccessful before the Board, may petition a Court of Appeals for review, notwithstanding the view that the statute is designed to provide a public remedy and not merely to vindicate private rights. Where a charging party has been successful before the Board and the Board's order is being attacked on a petition for review, such party is certainly a potentially "aggrieved" person. If not permitted to intervene, such party would be in a worse position with respect to the opportunity to have judicial review than if he had been unsuccessful before the Board. Should the Court deny the charging party the right to intervene and then refuse to enforce the order of the Board, the charging party would be an "aggrieved" person, who contrary to the intention of § 10(f) of the Act [U.S.C. 29 § 160(f)], would have

³ *Albrecht v. N.L.R.B.*, 181 F. 2d 652 (CA 7); *Marine Engineers Beneficial Assn. v. N.L.R.B.*, 202 F. 2d 546 (CA 3); *Korach v. N.L.R.B.*, 229 F. 2d 138 (CA 7).

been denied any opportunity for judicial review. Moreover, only a *party*, as distinguished from an *amicus curiae*, may petition for certiorari. Thus, recognition of the right of the charging party to intervene is essential if the statutory purpose of affording judicial review to persons aggrieved is to be fulfilled,

since the Board might decide not to apply to the Supreme Court for review of an unfavorable Circuit Court

Decision.⁴ To deny the charging party an opportunity to participate in the judicial proceedings in the Circuit Court would, in such circumstance, substantially prejudice him as an "aggrieved person."

10. For the foregoing reasons, we respectfully urge the Court to grant the Union's motion for intervention. Moreover, a denial of the motion would be inconsistent with the clear legislative intent of the National Labor Relations Act, as amended, to afford "aggrieved persons", including charging parties, the right to petition for judicial review in the Circuit Courts and the Supreme Court.

Respectfully submitted.

(S) BENJAMIN C. SIGAL,

DAVID S. DAVIDSON;

*Attorneys for International Union
of Electrical, Radio and Machine
Workers, AFL-CIO.*

AUGUST 9, 1961.

[File endorsement omitted.]

601 — CERTIFICATE OF SERVICE (omitted in printing)

In United States Court of Appeals
for the Third Circuit

No. 13700

ERIE RESISTOR CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
and

No. 13695

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS, LOCAL 613, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Motion to consolidate cases
Filed August 16, 1961

To the honorable, the CHIEF JUDGE AND THE JUDGES OF THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT:

ERIE RESISTOR CORPORATION, the respondent in Case No. 6-CA-1790 before the National Labor Relations Board, and petitioner in Case No. 13700 respectfully moves that Case No. 13700 and Case No. 13695 be consolidated for purposes of preparation of the record, briefing and argument upon the following grounds:

1. Both No. 13700 and No. 13695 are appeals from the same order of the National Labor Relations Board in Case No. 6-CA-1790, 132 NLRB No. 51. In No. 13700 Erie
603 Resistor Corporation filed a petition to review and set aside the order of the Board at approximately the same time that the International Union of Electrical Workers filed a petition to review the same order in No. 13695.

2. The parties in interest are the same in both appeals, they being the Board, the respondent, and the charging party in the case before the Board. There is a single record, transcript of testimony, intermediate report and factual situation in both appeals. The legal questions are closely related in both appeals.

3. Consolidation of these appeals will conserve the time of the Court, avoid unnecessary duplication of printed records

and factual recitals and arguments, and bring the related legal questions before the Court in a single argument in which all interested parties can participate.

Respectfully submitted.

(S) JOHN G. WAYMAN,

(S) REED SMITH SHAW & McCLAY,

747 Union Trust Building,

Pittsburgh, Pennsylvania.

Counsel for Erie Resistor Corporation.

Petitioner in Case No. 13,700.

Of Counsel:

Irving Olds Murphy,

Gifford, Graham, MacDonald & Illig,

615 Masonic Building,

Erie, Pennsylvania.

Dated: August 14, 1961.

[File endorsement omitted.]

605 In United States Court of Appeals for the
Third Circuit

No. 13695

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS, LOCAL 613, AFL-CIO, PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 13700

ERIE RESISTOR CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Present: McLAUGHLIN, KALODNER and FORMAN, Circuit Judges
*Order granting motion for leave to intervene and to consolidate
cases, etc.*

August 30, 1961

Upon consideration of the motions by petitioners in the
above entitled cases,

It is ORDERED that the motion by International Union of Electrical, Radio and Machine Workers, AFL-CIO, petitioners in No. 13695, to intervene in No. 13700 be and it hereby is granted;

It is Further ORDERED that the motion by Erie Resistor Corporation, petitioner in No. 13700, to consolidate the petitions for review in the above entitled cases for briefing and argument be and it hereby is granted;

It is FURTHER ORDERED that each petitioner may file briefs in the consolidated cases, that the respondent may file a consolidated brief in answer to the briefs of petitioners and that all parties stipulate to file a joint appendix in accordance with Rule 24(6) of this Court.

By the Court.

KALODNER,
Circuit Judge.

Dated: August 30, 1961.

[File endorsement omitted.]

606 In the United States Court of Appeals
for the Third Circuit

No. 13695

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS, LOCAL 613, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Answer to petition for review

Filed September 9, 1961

The National Labor Relations Board files this answer to the petition to review and modify the Board's order, issued against the Erie Resistor Corporation on July 31, 1961, and amended on August 7, 1961:

1. The Board admits the allegations of paragraphs 1 and 2 of the petition to review.

2. The Board denies the allegations of error set forth in paragraph 3 of the petition to review.

3. Pursuant to Section 10(f) of the Act, the Board is filing herewith a certified record of all documents, transcripts of testi-

mony, exhibits, rejected exhibits, and other material comprising the record before the Board in Case No. 6-CA-1790, upon which the Board's Decision and Order is based.

607 WHEREFORE, the Board prays that this Court cause notice of the filing of this answer to be served upon petitioner, and that the Court enter a decree denying the petition to review.

(S) MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D.C., this 7th day of September, 1961.

[File endorsement omitted.]

608 In United States Court of Appeals for the
Third Circuit

No. 13700

ERIE RESISTOR CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*Answer to petition for review and cross-petition for
enforcement*

Filed September 9, 1961

The National Labor Relations Board files this Answer to the petition to review and set aside the Board's order, issued against petitioner on July 31, 1961, and amended on August 7, 1961:

1. The Board admits the allegations of paragraphs 1 and 3 of the petition to review.

2. With respect to paragraph 2 of the petition, the Board prays reference to the certified record, filed herewith, for a full recital of the facts and procedure in this case.

3. The Board denies the allegations of error set forth in paragraph 4. of the petition, subparagraphs (a) thru (h).

4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act, and, pursuant to Section 10(e) of the Act, re-

spectfully requests this Court to enforce the order issued against petitioner in the proceedings designated on the records of the Board as Case No. 6-CA-1790.

609 5. Pursuant to Section 10 (e) and (f) of the Act, the Board is filing herewith a certified record of all documents, transcripts of testimony, exhibits, rejected exhibits, and other material comprising the record before the Board in Case No. 6-CA-1790, upon which the order is based.

WHEREFORE, the Board prays that this Court cause notice of the filing of this answer and request for enforcement to be served upon petitioner, and that this Court enter a decree denying the petition to review and enforcing the Board's order in full.

(S) MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D.C. this 7th day of September, 1961.
[File endorsement omitted.]

610 In United States Court of Appeals for the
Third Circuit

No. 13695

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS, LOCAL 613, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 13700

ERIE RESISTOR CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On petitions for review and cross-petition to enforce an order of
the National Labor Relations Board

Argued January 26, 1962

Before KALODNER, STALEY and SMITH, *Circuit Judges*

Opinion of the Court

Filed May 15, 1962

611 By SMITH, *Circuit Judge*.

This case is before the Court upon petitions for review filed by the Erie Resistor Corp. (the Company), and Local 613, I.U.E., AFL-CIO (the Union), and a cross-petition filed by the National Labor Relations Board (the Board) for the enforcement of its final order. These petitions were filed under Sections 10 (f) and (e) of the Labor Management Relations Act, 1947, 29 U.S.C.A. 160 (f) and (e). The essential facts are not in dispute and the jurisdiction of this Court is conceded.

Facts

The Company maintained a manufacturing plant at Erie, Pennsylvania, where it was engaged in the manufacture and sale of electronic components, electro-mechanical assemblies, and custom molded plastics. The production and maintenance workers of the Company were, and had been since 1951, represented by the Union. There had been in force and effect successive collective bargaining agreements, the last of which was terminated on March 31, 1959.

Approximately two months prior to the termination of the then existing agreement, the Union notified the Company of its desire to enter into negotiations in anticipation of a new contract. The negotiators for the respective parties met from time to time thereafter but were unable to reach full agreement. When the existing agreement terminated on March 31, 1959, a strike was called. It is here admitted that at its inception the strike was economic. When the strike was called there were 478 production and maintenance workers actively employed and 450 on layoff status; of those on layoff status, approximately 400 had no reasonable expectation of being recalled. All of the workers actively employed joined the strike.

The Company attempted to maintain production operations during the month of April by using clerical employees and other personnel outside the bargaining unit. Production

612 tion declined to a level between 15% and 30% of normal, and several customers cancelled their orders with

the Company. On May 3, 1959, each of the strikers was notified by letter that the Company intended "to obtain replacements"; they were further notified that they would hold their positions only until replaced. The hiring of replacements commenced on May 11, and continued thereafter until June 24, 1959. The replacements included new employees, employees

on layoff status, and returning strikers. When the applicants were accepted they were told that they would not be laid off or discharged by reason of the settlement of the strike.

When the negotiators met on May 11, 1959, the representatives of the Union were informed that replacements were being assured that they would not be discharged upon settlement of the strike. The Company, prompted by a desire to implement its assurances, proposed that the existing seniority system be so modified as to accord the replacements some form of preferential seniority. The Company offered to consider any plan acceptable to the Union, but the offer was rejected. The subject was discussed at five sessions held between May 11th and May 28th. The representatives of the Union remained adamant in their refusal to consider it on the ground that a preferential seniority system would be discriminatory and illegal.

On May 27, 1959, the Company formulated a preferential seniority plan under which twenty years were added to the regular length of service of all production and maintenance workers who accepted employment during the strike. The plan was limited in its application to future layoffs and recalls from lay-off. The Union was informed of the plan on the following day and publicized it in radio and television broadcasts on May 30th and 31st. The strikers were informed by letter addressed to each of them by the Company on June 10th; copies of the plan were posted on the Company bulletin boards on June 15th.

Notwithstanding the formulation of a preferential seniority policy, the Company expressed a willingness to consider any alternative plan proposed by the Union.

The strike ended on June 25, 1959, after the Union withdrew the picket line and offered to submit the seniority issue to the Board. Thereafter the strikers who had not been replaced were recalled by the Company in the order of seniority. By July 5th, 358 production and maintenance workers had returned to work; this number increased to 442 by September 20th. Thereafter, between September of 1959 and May of 1960, 202 employees were laid off for economic reasons; many of these were recalled strikers whose seniority was insufficient only because of the operation of the preferential seniority plan.

Decision and Order of the Board

The Trial Examiner concluded that under the applicable decisions a preferential seniority policy cannot be held illegal in

by a desire "to encourage or discourage membership in a labor organization."

The Supreme Court has consistently held that the discriminatory conduct of an employer is not unlawful in the absence of an illegal motive. *Teamsters Local v. Labor Board*, 365 U.S. 667 (1961); *Radio Officers v. Labor Board*, 347 U.S. 17 (1954); *Labor Board v. MacKay Co.*, 304 U.S. 333 (1938); *Labor Board v. Jones & Laughlin*, 301 U.S. 1 (1937). The Court has adhered to the view that motivation is a relevant factor and the test of the employer's conduct. *Ibid.*

The case of *Teamsters Local v. Labor Board*, supra, is pertinent. The matter came before the Board on a complaint which charged that an exclusive hiring agreement between an employer and a union violated Sections 8(a) (3) and (1). The agreement was held illegal on the ground that it inherently and unlawfully encouraged union membership.² The decision of the Board was sustained by the Court of Appeals.³ The decision of the Court of Appeals was reversed by the Supreme Court. While the ultimate decision of the latter Court appears to rest on other grounds, the majority opinion reiterates that "[i]t is the 'true purpose' or 'real motive' in hiring or firing that constitutes the test." *Teamsters Local v. Labor Board*, supra at page 675.

The relevance of motive as a determinative factor is discussed at length in the concurring opinion of Mr. Justice Harlan, with whom Mr. Justice Stewart concurred, 365 U.S. 667, 677-685. It is therein stated, at page 679:

What in my view is wrong with the Board's position in these cases is that A MERE SHOWING OF FORESEEABLE ENCOURAGEMENT OF UNION STATUS IS NOT A SUFFICIENT BASIS FOR A FINDING OF VIOLATION of the statute. It has long been recognized that an employer can make reasonable business decisions, UNMOTIVATED BY AN INTENT TO DISCOURAGE UNION MEMBERSHIP OR PROTECTED CONCERTED ACTIVITIES, although the foreseeable effect of these decisions may be to discourage what the act protects. [Emphasis by this Court.]

² *Los Angeles-Seattle Motor Express, Incorporated, et al.*, 121 NLRB 1629 (1958); see also *Mountain Pacific Chapter, etc.*, 119 NLRB 883 (1957).

³ *Local 357, International Brotherhood, etc. v. NLRB*, 275 F. 2d 646 (D.C. Cir. 1960).

Mr. Justice Harlan went on to say, at page 680: "In general, this Court has assumed that a finding of a violation of § 8(a) (3) or § 8(b) (2) requires an affirmative showing of a MOTIVATION of encouraging or discouraging union status or activity."

616 We are of the opinion that *Radio Officers v. Labor Board*, supra, lends support to our point of view.⁴ We refer particularly to *NLRB v. Gannett News Co.*, 347 U.S. 17, 34. Therein the employer and the union were parties to an agreement under which the union was recognized as the exclusive bargaining agent for both union and non-union employees. Pursuant to the terms of a supplementary agreement, retroactive wage increases were granted to union employees but denied non-union employees; gratuitous vacation benefits were granted and denied on the same basis.

The matter came before the Board⁵ on a complaint which charged the employer and the union with a violation of Sections 8(a) (3) and (1). The only answer offered by the employer was that the retroactive wage payments and gratuitous benefits had been paid under the compulsion of a legally binding contract. The Board concluded, as did the Trial Examiner, that the contract afforded no defense to the charge. We agree with this conclusion. The Board held that the disparate treatment of the employees on the basis of union membership foreseeably encouraged union membership and was therefore a violation of the pertinent sections under which the employer and the union were charged.

The view of the Board was sustained by the Supreme Court, which held that the evidentiary facts, absent proof of a valid business reason, were sufficient to support an inference that the disparate treatment of the employees was intended to encourage union membership. The Court said, at page 46: "No more striking example of discrimination so foreseeably causing employee response as to obviate the need for any other proof of intent is apparent than the payment of different wages to union employees doing a job than to non-union employees doing the same job."

⁴ Three cases were consolidated for hearing and disposition.

⁵ *Gannett News Co., Inc., et al.*, 93 NLRB 290 (1951).

617 The Court held, at page 47, "that in the circumstances of this case, the union being exclusive bargaining agent for both member and nonmember employees, the employer could not, without violating § 8(a)(3), discriminate in wages solely on the basis of such membership even though it had executed a contract with the union prescribing such action. Statements throughout the legislative history of the National Labor Relations Act emphasize that exclusive bargaining agents are powerless 'to make agreements more favorable to the majority than to the minority.' Such discriminatory contracts are illegal and provide no defense to an action under § 8(a)(3)."

The Supreme Court held: "that specific evidence of intent to encourage or discourage is not an indispensable element of proof of violation of § 8(a)(3)," but it did not disregard motivation as a relevant factor. The Court said:

The relevance of the motivation of the employer in such discrimination has been consistently recognized under both § 8(a)(3) and its predecessor. In the first case to reach the Court under the National Labor Relations Act, *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, in which we upheld the constitutionality of § 8(3), we said with respect to limitations placed upon employers' right to discharge by that section that "the [employer's] true purpose is the subject of investigation with full opportunity to show the facts." *Id.*, at 46. In another case the same day we found the employer's "real motive" to be decisive and stated that "the act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees." *Radio Officers v. Labor Board*, *supra*, at page 43.

* We recognize, as did the Supreme Court in the cited case and in other cases, the right of the Board to draw an inference of unlawful motive in the absence of evidentiary facts to support an inference to the contrary.

618 It was established by *Labor Board v. MacKay*, supra, that an employer, TO PROTECT AND CONTINUE HIS BUSINESS, may replace strikers during the strike and assure the replacements that their employment will not be terminated upon settlement of the strike. Such a replacement policy is obviously discriminatory and may tend to discourage union membership. The presence of these factors in and of themselves do not render the policy illegal. The test of its legality is the true purpose, or real motive, of the employer. This was clearly the test applied by the Court in the cited case. *Ibid.* The rationale of the *MacKay* case is pertinent in the instant case.

We direct our attention to *NLRB v. California Date Grow. Ass'n.*, 259 F. 2d 587 (9th Cir. 1958), and *Olin Mathieson Chem. Corp. v. NLRB*, 232 F. 2d 159 (4th Cir. 1956). The question before the Court in these cases was the legality of a preferential seniority policy. It was found in each case that there was no evidence that the policy was adopted to protect and continue the business. The respective Courts decided that the policies were motivated by a desire to discourage union activities. It should be noted that both Courts applied the test of real motive. The decisions recognize that a preferential policy would be proper under appropriate circumstances.

We reject as unsupportable the rationale of the Board that a preferential seniority policy is illegal however motivated. We are of the opinion that inherent in the right of an employer to replace strikers during a strike is the concomitant right to adopt a preferential seniority policy which will assure the replacements some form of tenure, provided the policy is adopted SOLELY to protect and continue the business of the employer. We find nothing in the Act which proscribes such a policy. Whether the policy adopted by the Company in the instant case was illegally motivated we do not decide. The question is one of fact for decision by the Board.

619 The additional question raised in the petition for review filed by the Union is rendered moot by our decision; we therefore see no reason to discuss it.

The cross-petition for enforcement will be denied.

620 In United States Court of Appeals
for the Third Circuit

No. 13695

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS, LOCAL 613, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 13700

ERIE RESISTOR CORPORATION, PETITIONER

— v. —

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Judgment

June 26, 1962

Before KALODNER, STALEY and SMITH, *Circuit Judges*

THIS CAUSE came on to be heard upon the petitions of International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO and Erie Resistor Corporation to review and set aside a certain order of the National Labor Relations Board issued against Erie Resistor Corporation on July 31, 1961, and upon cross-petition of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel January 26, 1962, and has considered the briefs and the transcript of record filed in this cause. On May 15, 1962, the Court, being fully advised in the premises, handed down its decision denying enforcement of the Board's order. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that the order of the National Labor Relations Board, dated July 31, 1961, directed against Erie Resistor Corporation, its officers, agents, successors and assigns, be and it hereby is denied.

By the Court.

WILLIAM F. SMITH,
Circuit Judge.

Dated: June 26, 1962.

[File endorsement omitted.]

621 I, Ida O. Creskoff, clerk of the United States Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Joint Appendix (Volumes I and II) and proceedings in this Court in the case of International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO, petitioner, vs. National Labor Relations Board, respondent, No. 13,695; on file and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 2d day of July, 1962.

[SEAL]

IDA O. CRESKOFF,

Clerk of the U.S. Court of Appeals,

Third Circuit.

622 I, Ida O. Creskoff, clerk of the United States Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Petition for Review and Set Aside an Order of the National Labor Relations Board; Motion by International Union of Electrical, Radio and Machine Workers for leave to Intervene; and Answer to Petition for Review and Cross-Petition for Enforcement; in the case of Erie Resistor Corporation, petitioner, vs. National Labor Relations Board, respondent, No. 13,700; on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 6th day of July, 1962.

[SEAL]

IDA O. CRESKOFF,

Clerk of the U.S. Court of Appeals,

Third Circuit.

24

NLRB VS. ERIE RESISTOR CORP. ET AL.

623

Supreme Court of the United States

No. 288, October Term, 1962.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

ERIE RESISTOR CORPORATION, ET AL.

Order allowing certiorari

October 8, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Goldberg took no part in the consideration or decision of this petition.